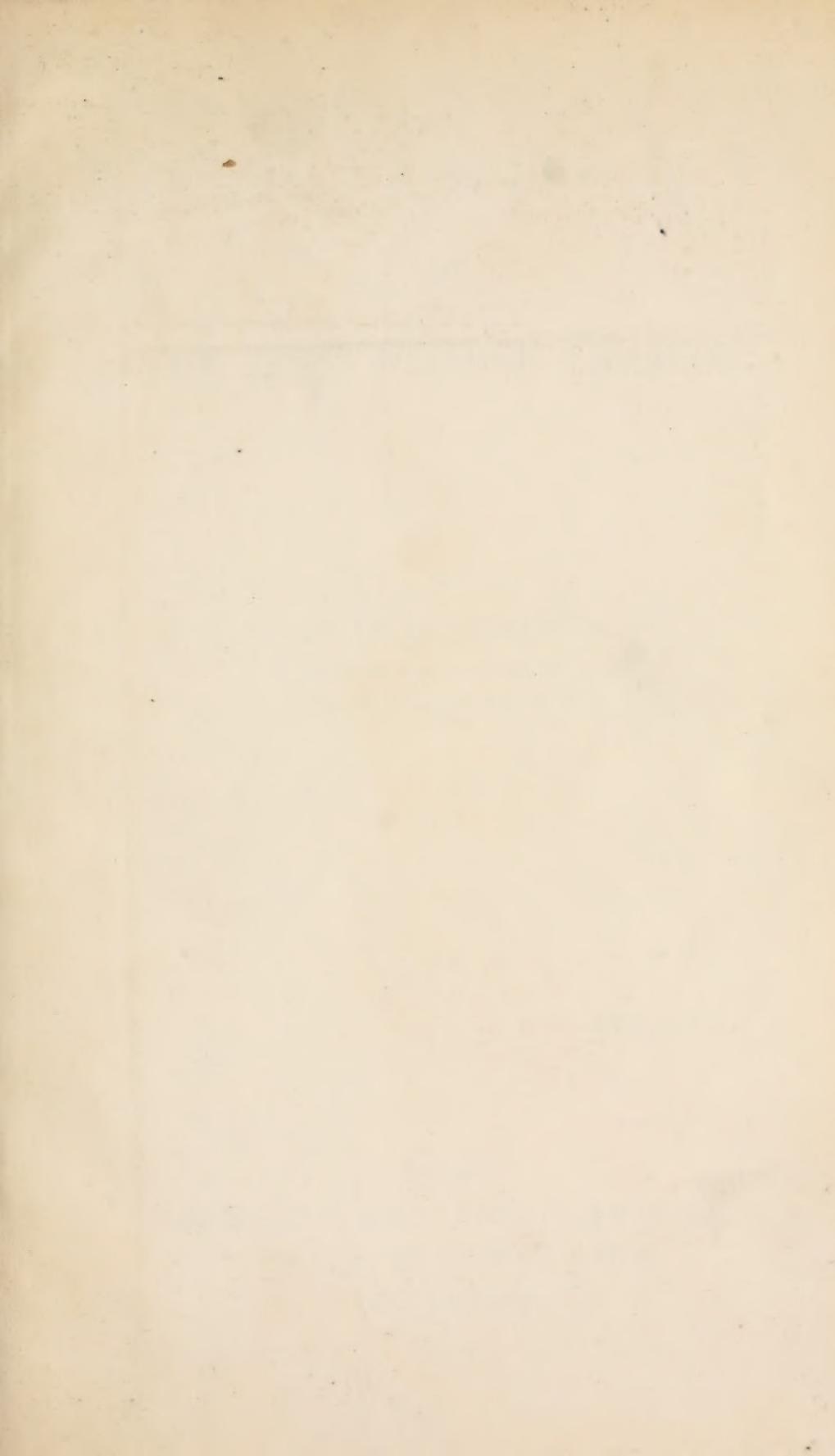


# EXCESS PROFITS DUTY

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R. J. SUTCLIFFE







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# EXCESS PROFITS DUTY

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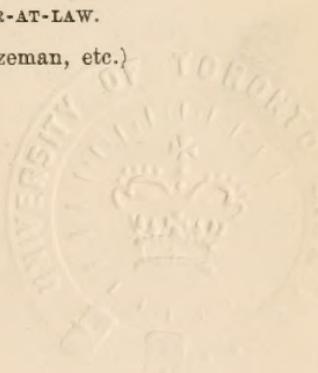
## THE CASES DECIDED THEREON.

BY

R. J. SUTCLIFFE,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

(Scott Scholar; Clement's Inn Prizeman, etc.)



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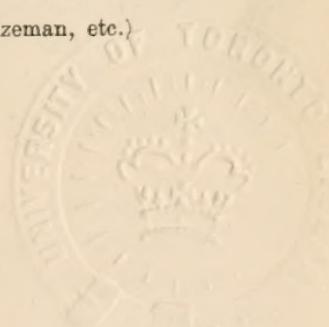
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## PREFACE.

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EXCESS profits duty was intended purely as a war tax, and was intended originally to terminate with the war. It has had one virtue, however, which has endeared it to the heart of statesmen —it has been the source of large revenues. That has probably been its only virtue.

On the other hand, it has many vices.

It has helped to encourage unwarrantably high wages and prices, from which the country is at present suffering.

It has a clogging effect upon industry, and particularly it acts as a deterrent in the risking of money in new ventures. Traders commencing new businesses wish to see a possible return of 30 or 40 or 50 per cent. on their capital to counterbalance the possibility that they may lose the lot.

It has abstracted from many businesses the profits which under ordinary circumstances would have been put by to provide for the critical time likely to follow the present period of high prices. Trade ebbs and flows in cycles. When it flows traders buy on a rising market and make increased profit. When it ebbs they buy on a falling market and often make large losses. The accumulated profits of the good period enable them to meet those losses. But in the present instance those profits have had to be paid away, and when the bad times come many will be seriously hit.

At the moment the continuance of the duty is probably viewed with mixed feelings. Some think that as the war is now over the duty should cease. Others are already foreseeing, or experiencing, the bad times, and hope to obtain benefit from the continuance of the repayment and set-off provisions.

To most manufacturers the present is an important period in the history of the duty, for there is likely to be considerable heart-burning over deductions to be obtained in respect of depreciation, obsolescence, &c. of plant and other assets, and it is important to those liable for the duty to get proper allowances under this head. Another important question relates to the valuation and realization of stocks, bought at inflated prices, which all hope will not be maintained. In fact, the probability is that, even if the duty is not renewed next year, the questions arising out of it will not be settled for several years.

Though in existence for only four years, the duty or portions of it are affected directly or indirectly by ten statutes and several sets of rules and regulations. The writer has attempted to collect the various relevant provisions from these statutes under what seemed appropriate heads, to explain them so far as seemed necessary or possible, and to note the cases decided thereon, and it is hoped that the care which the writer has taken may be of use to those who have occasion to refer to this small work.

RICHARD J. SUTCLIFFE.

1, Temple Gardens, Temple, E.C.,  
*21st August, 1919.*

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# EXCESS PROFITS DUTY.

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## CHAPTER I.

### THE DUTY AND THE PERSONS AND BUSINESSES CHARGEABLE.

EXCESS profits duty was first imposed by the Finance (No. 2) Act, 1915 (hereafter called “the principal Act”). It is essentially a war time duty, and was imposed owing to the expectation that many businesses would make large profits during the war, and to the view that it would be no hardship on the owner of the business to have to hand over to the State to help to meet the expenses of the war a large proportion of profits which would not have been made but for the war. Before the passing of the Act the State had taken over the control of many engineering businesses and had adopted a method of limiting the profits to be made in those businesses. But the object of the excess profits duty provisions in the above Act was to make all trades and businesses (with certain limited exceptions), whether employed upon munitions of war work or not, liable to hand over part of any increase of profits made by them.

Excess profits duty is payable in respect of all trades or businesses (whether continuously carried on or not) of any description which

- (1) Are carried on in the United Kingdom, or
- (2) Are owned or carried on in any other place by persons ordinarily resident in the United Kingdom (a).

No difficulty is likely to arise over the question whether a trade or business is carried on in the United Kingdom. The phrase obviously includes every case where excess profit is made from a manufacture or the transactions which constitute a trade

(a) The principal Act (5 & 6 Geo. 5, c. 89), s. 39.

or business in the United Kingdom, whether by a branch of a foreign firm or not. More trouble is likely to arise as to whether persons are or are not ordinarily resident in the United Kingdom. The term "ordinarily resident" has already been the subject of contention in relation to income tax. In *De Beers Consolidated Mines, Ltd. v. Howe* (b) it was held that the test of residence of a corporation is not where it is registered, but where it really keeps house and does its real business, and that the real business is carried on where the central management and control actually abides.

"Person" includes any body of persons corporate or unincorporate (Interpretation Act, 1889, s. 19).

The principal Act (c) expressly exempts from liability to excess profits duty:

- (a) Husbandry in the United Kingdom;
- (b) Offices or employments; and
- (c) Any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on and in which no capital expenditure is required or only capital expenditure of a comparatively small amount.

"Husbandry" probably includes market gardens (d). It does not, however, include a registered co-operative dairy society, which carries on under its rules the manufacture and sale of butter in the interests of its members, who supply milk for the purpose; and such a society is not carrying on the business of husbandry so as to be exempt from excess profits duty (e).

Where, however, a company owned a factory where they distilled herbs and manufactured drugs, and they also occupied a farm on which they grew herbs for treatment in the factory, it was held that the occupation of the farm was husbandry, and that as it was possible to separate this part of the company's

(b) (1906) A. C. 455.

(c) Sect. 39.

(d) *Per Kekewich, J.*, in *Meux v. Cobley*, (1892) 2 Ch. 261.

(e) *Re Cavan Central Co-operative Agricultural and Dairy Soc., Ltd.* (1917), 2 I. K. B. 594, Div. Ct. (Ireland).

business from the business carried on at the factory, the Income Tax Commissioners might make such separation (*f*).

The term "offices or employments" is a very wide one, and will probably be the subject of contention. Agents, managers and others whose business includes the holding of offices and employments, and whose income depends wholly or partly on commission, are liable to the duty (seot. 39), but a whole time servant who has no business of his own at all is not liable to the duty (*g*).

Exemption (c) excludes from liability to the duty the professional earnings of barristers-at-law, solicitors (query, negotiating fees), writers to the signet, doctors, architects, mining engineers, patent agents, and it is submitted persons generally who make their living by fees earned or advice given in some professional capacity, and whose business needs little capital.

The master of a preparatory school, of which he is himself the proprietor, and who has the necessary personal qualifications, is exempted from liability to the duty, notwithstanding that he has purchased the freehold, fixtures and goodwill of the school, because it is not necessary for a preparatory boarding school master to own the freehold of the premises, and the only capital expenditure required is small in comparison with the personal qualifications necessary for carrying on the profession successfully (*h*).

A limited company formed to take over the business of a firm of naval architects and consulting engineers, previously carried on in partnership by three persons who became the only members of the company, and carrying on such business, is not itself carrying on a profession within the meaning of exemption (c) above, and is liable to excess profits duty (*hh*).

(*f*) *Inland Revenue Commissioners v. Ransom (William) & Son, Ltd.*, (1918) 2 K. B. 709; 119 L. T. 369; 34 T. L. R. 533.

(*g*) *Robins v. Commissioners of Inland Revenue*, *The Times*, June 24th, 1919.

(*h*) *Commissioners of Inland Revenue v. North and Ingram*, (1918) 2 K. B. 705.

(*hh*) *Wm. Esplen, Son & Swainston, Ltd. v. Commissioners of Inland Revenue*, *The Times*, 23rd July, 1919.

A difficult question arose in *Inland Revenue Commissioners v. Maxse*, which came before Mr. Justice Sankey in the first instance (*i*). In 1893 M. purchased the "National Review" for 1,500*l.*, and since then had been the sole proprietor, editor and publisher. The earnings were derived from the sale of the magazine, from advertisements and from reprints of articles which had practically all been written by M. The outgoings included payments to contributors, cost of paper and printing, advertising, office rent of 63*l.* per annum, and office expenses. The magazine was printed by an independent contractor. A manager at 250*l.* per annum was employed by M., and two clerks, who did the advertisement canvassing and account keeping. Before the war M. wrote a large part of each monthly number, though the bulk of the matter was contributed by others. The sales were largely due to the popularity of M.'s writings. When the war broke out M. greatly increased his personal contributions, and had since continued to do most of the writing. At the present time practically no capital was required by M. M. contended that the profits were earned by him by reason of his personal qualifications; that the capital which he had expended was insignificant in comparison with the personal qualifications required to earn the profits, and that he was exempt from excess profits duty. Mr. Justice Sankey decided against M.'s claim, but on appeal the Court of Appeal held it to be well founded, and that the profits arising from the two branches of his business—that of a journalist and editor and that of a publisher—must be separately assessed (*k*).

Stockbroking is not a profession within the meaning of the exemption, and stock and share brokers and members of the Stock Exchange were rightly assessed to excess profits duty (*l*).

Where the profits of a company consist partly of profits not liable to the duty, and partly of profits which are liable (*e.g.*,

(*i*) 119 L. T. 371.

(*k*) L. T. J., 29th March, 1919; (1919) W. N. 119; 1 K. B. 647.

(*l*) *Barker & Sons v. Commissioners of Inland Revenue*, L. T. J., 19th April, 1919; 35 T. L. R. 443.

in the case of estate agents and surveyors, &c.), and separate accounts are kept or the profits can be separately assessed, this will be done (*ll*).

A curious case has been decided in the Scotch courts (*m*). A paper manufacturing company held premises on lease at a net rent of 584*l.* up to November, 1914, when they purchased the same for a feu farm duty of 200*l.*, which was reduced to 148*l.* by the letting by them of part of the premises at 52*l.* per annum. They paid no consideration on the purchase apart from the feu farm duty. Held, that they were liable for duty on the amount by which their profits were increased by the above transaction.

The Act (*n*) expressly makes liable to the duty "the business of any person taking commissions in respect of any transactions or services rendered, and of any agent of any description (not being a commercial traveller, or an agent whose remuneration consists wholly of a fixed and definite sum not depending on the amount of business done or any other contingency)." Obviously under this part of the section, the profits made by agents who represent numbers of manufacturers, and look solely for remuneration to commission on the selling price of goods for which they obtain orders, plus in some cases small fixed payments, would be liable to duty. But it would appear on the construction of the paragraph in brackets that a commercial traveller is not liable to the duty whether his remuneration consists solely of commission on goods sold or not; and other agents remunerated solely by a fixed sum are expressly exempted.

In *Burt & Co. v. Commissioners of Inland Revenue* (*o*), the appellants carried on business as secretaries and agents of public companies, and they received as remuneration from each com-

(*ll*) *Inland Revenue Commissioners v. Ransome*, and *Inland Revenue Commissioners v. Maxse*, *supra*.

(*m*) *Inland Revenue v. Guthrie, Craig, Peter & Co., Ltd.* (1918), 55 Sc. L. R. 659.

(*n*) *Sect. 39.*

(*o*) 87 L. J. K. B. 198; (1918) 1 K. B. 162; confirmed on appeal, 35 T. L. R. 332; 120 L. T. 673.

pany a small fixed annual sum, and in most cases an additional commission on the sale of produce, which was sold by brokers acting on the appellants' instructions. One of the appellants also acted as expert adviser with reference to the world's sugar markets. No capital was required except the small sum necessary to meet current expenses. Mr. Justice Sankey held that the appellants were persons taking commissions or agents whose remuneration did not consist wholly of a fixed and definite sum not depending on the amount of business done or any other contingency, and that the appellants were liable to assessment of the duty.

A whole time servant, however, although remunerated solely by commission, is not liable to the duty (*p*).

In *Smeeton v. Att.-Gen.* (*pp*), a consulting engineer who received a salary and commission on goods supplied to the Government applied to the Court for a declaration that he was not liable to make any return for the purpose of the duty, or for payment of any duty or to comply with the requirements of the surveyor to supply information, but the Court refused to make any declaration on the ground that if wrongly assessed the plaintiff had an appeal under the Act.

#### *The accounting period.*

In every business presumably the accounts are made up and balanced periodically. The effect of the Acts (*q*) is that where the accounts in any business have been made up for a definite period the excess profits and the resultant duty are to be ascertained for such period, and such period is called "the accounting period," but when the accounts have not been made up for any definite period, or for the period for which they have been usually made up, or if a year or more has elapsed since the accounts were last made up, then the Commissioners of Inland Revenue may determine the accounting period to be any period not less than six months or more than a year.

(*p*) See *Robins v. Commissioners of Inland Revenue, supra.*

(*pp*) *Times* Newspaper, 29th July, 1919.

(*q*) Sect. 38 (2).

Any period for which the books have been actually made up for any interim or other purpose in such a manner that the profits for that period can be readily ascertained is (without prejudice to the powers of the Commissioners under the last provision) to be taken as an accounting period, notwithstanding that under the articles of association of the company carrying on the trade or business, or under any other regulations affecting the carrying on of the trade or business, the accounts are also required to be made up for some other period, and notwithstanding that such accounts are not issued (*r*).

*The duty.*

Excess profits duty is a proportion of the amount by which the profits in the accounting period exceed the pre-war standard of profits, plus, if the accounting period covers one year, the sum of 200*l.* (*s*), or if it covers less than one year, then a proportionately reduced amount (*t*).

The duty as originally imposed related to accounting periods which ended after the 4th August, 1914, and before the 1st July, 1915, and was fixed at 50 per cent. of the excess of profits over the pre-war standard of profits, plus the above-mentioned 200*l.*, or a proportionately reduced sum where the accounting period covered a period of less than a year.

The duty has since been annually imposed and the percentage increased twice.

By the Finance Act, 1916 (*u*), the duty is imposed for accounting periods ending on or after the 1st July, 1915, and before the 1st August, 1917, and the duty is increased to 60 per cent. of the excess, as respects excess profits arising in any accounting period beginning after the expiration of a year from the commencement of the first accounting period (*x*). Where part of an accounting period is after and part before the expiration of a year from the commencement of the first accounting

(*r*) Finance Act, 1916, s. 51.

(*s*) Principal Act, s. 38 (1).

(*t*) Ibid. s. 38 (2).

(*u*) 6 & 7 Geo. 5, c. 24, s. 45.

(*x*) Ibid. s. 45 (2). See also as to apportionment the Finance Act, 1917, s. 27.

period the total excess profits and any deficiencies or losses arising in the accounting period are to be apportioned between the time up to and including and the time after that date in proportion to the length of those times respectively, and the rate of duty attributable to the time after and the time before and including that date are to be respectively 60 and 50 per cent.

The duty is imposed for accounting periods ending on or after the 1st August, 1917, and before the 1st August, 1918, and is increased to 80 per cent. as from the 1st January, 1917 (*y*), and in the case of accounting periods commencing before but ending after that date the duty is 80 per cent. as respects so much of the excess profits as may be apportioned to the part commencing on that date.

Any additional duty in respect of past accounting periods under the Acts may be assessed and recovered notwithstanding that duty has already been assessed in respect of that period (*z*).

By the Finance Act, 1918 (*a*), the duty is continued at 80 per cent., and applies to any accounting period ending on or after the 1st August, 1918, and before the 1st August, 1919, unless Parliament otherwise determines.

But the Finance Act, 1919, reduces the duty to 40 per cent. and extends its operation to accounting periods ending before the 5th August, 1920, unless Parliament otherwise determines. The reduction takes effect from and including the 1st January, 1919.

#### *The persons liable.*

The duty may be assessed (*b*):

- (1) On any person for the time being owning or carrying on the trade or business.
- (2) On any person acting as agent for the owner (or person carrying on the trade or business) in carrying on the trade or business.

(*y*) Finance Act, 1917 (7 & 8 Geo. 5, c. 31), s. 20.

(*z*) Finance Act, 1916, s. 45 (2), and Finance Act, 1917, s. 20 (2).

(*a*) 8 & 9 Geo. 5, c. 15, s. 35 (1).

(*b*) Principal Act, s. 45 (2).

- (3) Where a trade or business has ceased, on the person who owned or carried on the trade or business or acted as agent in carrying on the trade or business immediately before the time at which the trade or business ceased.
- (4) Where there has been a change in the ownership of the trade or business, the Commissioners of Inland Revenue may, if they think fit, take the accounting period as the period ending on the date on which the ownership has so changed and assess the duty on the person who owned or carried on the trade or business or acted as agent for the person carrying on the trade or business at that date.

Where a company is wound up after the commencement of the principal Act and is chargeable with excess profits duty, it is the duty of the liquidator of the company to give notice to the Commissioners and to set aside such sum out of the assets of the company as appears to the Commissioners to be sufficient to provide for any such excess profits duty as may become chargeable (c).

In the case of a trade or business which by reason of its being unable to pay its debenture holders or creditors is being carried on by a liquidator, receiver, or trustee under the Court, no duty is to be levied or paid until provision has been made for payment of such unpaid debenture holders or creditors (d). This beneficial provision, as will be observed, only applies where the business is "carried on under the Court."

The purchaser of or successor to a business may find himself liable (as the person for the time being owning or carrying on the trade or business) for duty on the profits made before he took over the business (e).

As to the person liable in the case of trading stocks sold otherwise than in the ordinary course of business, see "Sale of Trading Stocks."

(c) Principal Act, s. 45 (4); Finance Act, 1916, s. 45 (1) and (3); Finance Act, 1917, s. 20 (1) and (3); Finance Act, 1918, s. 34.

(d) Finance Act, 1916, s. 56.

(e) See *Robins v. Commissioners of Inland Revenue*, *Times* paper, 24th June, 1919.

## CHAPTER II.

## PRE-WAR STANDARD OF PROFITS.

In order to ascertain the excess profits in any trade or business it is necessary to establish a standard of profits, the surplus over which will be excess profits, and therefore liable to the duty.

This standard may be ascertained in one of three ways according to the circumstances.

- (1) It may be an average of two (or, in the case hereafter mentioned, four) pre-war years, or if the business has not been in operation during three complete pre-war years it may be the profits for the last pre-war trade year; or
- (2) It may be a certain percentage called the statutory percentage calculated on the capital of the business at the end of the last pre-war trade year; or
- (3) It may be a certain percentage on the average capital employed in the business in the accounting period.

*(1) Standard by reference to pre-war trade years.*

The principal Act (*a*) allows the taxpayer to select any two of the three last pre-war trade years, and the average profits of the two years so selected become the pre-war standard, and are referred to as the profits standard. The same Act and section defines "the last pre-war trade year" to mean the year ending at the end of the last accounting period before the 5th August, 1914, and "the three last pre-war trade years" to mean the three years ending at the three corresponding times.

Provision is made by the Fourth Schedule to the principal Act for cases where it is alleged by the taxpayer that the three last pre-war trade years have been years of abnormal depression.

(*a*) Finance (No. 2) Act, 1915, s. 40 (2).

If the taxpayer is able to satisfy the Commissioners of Inland Revenue that such years have been in fact years of abnormal depression, then the taxpayer may select any four of the last six pre-war trade years, and the average profits for the four years so selected become the profits standard. But the three last pre-war trade years are not to be considered years of abnormal depression unless the average profits of those years have been at least 25 per cent. lower than the average profits of the preceding three years (*b*).

In the case of a business commenced shortly before the war, if it has not been in existence for three pre-war trade years but has been in existence for two such years, the taxpayer may elect to have either (1) the average profits of those years, or (2) the profits of the last of those years, taken as the profits standard. If the business has not been in existence for two full pre-war trade years, but has been in existence for one such year, the profits of that year are to be taken as the profits standard (*c*). If the business has not been in existence for one pre-war trade year the profits standard is to be taken to be a percentage on the average capital of the accounting period as hereinafter mentioned (*d*).

In the same para. (4) of the Fourth Schedule, Part II. (which deals with businesses in which there have not been three pre-war trade years), there follows a cryptic provision, viz.: “Where the trade or business is an agency or business of a nature involving capital of a comparatively small amount, the pre-war standard of profits shall be computed by reference to the profits arising from any trade, business, office, employment or profession of any sort, whether liable to excess profit duty or not, carried on by the agent or other person before his new trade or business commenced as if it were the same trade or business; but only to the extent to which the income from the former trade, business, office, employment or profession has

(*b*) Finance (No. 2) Act, 1915, 4th Sched. Part II. par. 3.

(*c*) 4th Sched., Part II., par. 4.

(*d*) Page 13.

been diminished." Presumably this means that the profits from the former trade, &c. shall be used to fix the pre-war standard of profits, but one is left in doubt as to whether there is to be an average in this case, as the words "but only to the extent to which the income . . . has been diminished" seem to indicate the profits of the last year only; and any profits from the new business seem to be excluded, notwithstanding that it may have been carried on for one or two pre-war trade years.

The profits of any pre-war trade year are to be computed on the same principles and subject to the same provisions as the profits of the accounting period are computed (e). And where the accounting period for which the excess profits duty is to be assessed is less than a year the amount of the pre-war standard of profits is to be proportionately reduced (f).

(2) *Profits standard ascertained by way of percentage on pre-war capital.*

If the taxpayer shows to the satisfaction of the Commissioners of Inland Revenue that the average profits of any two out of the three last pre-war trade years were less than the percentage standard fixed by the Act, which is called the "statutory percentage," then the pre-war standard of profits shall be taken to be the percentage standard (g). This statutory percentage is fixed by the principal Act at 6 per cent. in the case of a trade or business carried on or owned by a company or other body corporate, and 7 per cent. in the case of any other trade or business.

In the case of a trade or business not carried on or owned by a company or other body corporate 8 per cent. is substituted for 7 per cent. by the Finance Act, 1917 (h). In the case of a

(e) Principal Act, 4th Sched., Part II. (1).

(f) Ibid. 4th Sched., Part II. (2).

(g) Ibid. s. 40 (2). Where the Commissioners of Inland Revenue have assessed the duty on a profits basis the Special Commissioners have no authority on appeal to adjust it on a percentage basis: *Port of London Authority v. Commissioners of Inland Revenue*, (1919) W. N. 224.

(h) Sect. 26 (2).

trade or business carried on or owned by a company or other body corporate the statutory percentage for the purpose of the pre-war standard still remains at 6 per cent.

The statutory percentage is to be calculated on the capital of the trade or business as existing at the end of the last pre-war trade year.

(3) *Pre-war profits standard equivalent to a percentage upon the capital employed during the accounting period.*

This applies in the case where there has not been one pre-war trade year. The pre-war standard of profits is to be taken to be the statutory percentage on the average amount of capital employed in the trade or business during the accounting period (*i*). This applies to all businesses (*i.e.*, new businesses) which have been commenced during the war, as well as to those which, though commenced prior to the war, have not had one pre-war trade year.

The statutory percentage, as stated above, was fixed at 6 per cent. in the case of a company or other body corporate, and 7 per cent. in other cases (*k*). But by the Finance Act, 1917 (*l*), where there has not been one pre-war trade year this 6 per cent. has been increased to 9 per cent. in the case of a company or other corporate body, and by the joint effect of sub-sects. (1) and (2) of sect. 26 of the latter Act it has been increased to 11 per cent. in other cases.

It will be remembered (see Chapter I.) that in all cases the excess profits duty is only calculated upon the amount by which the profits of the accounting period exceed the pre-war profits standard (calculated as explained in this chapter, and whether it consists of a profits average or a percentage upon the capital employed), plus 200*l.*, or proportionately less if the accounting period is less than a year.

(*i*) Principal Act, 4th Sched., Part II. (4).

(*k*) Ibid. s. 40 (2).

(*l*) Sect. 26 (1).

(4) *Statutory percentage in special cases.*

Where capital has been brought into the business within three years (now six years (*m*)) prior to the 1st August, 1914, but has only commenced to be remunerative or fully remunerative in the accounting period, an amount equal to the statutory percentage, or (where interest has been earned on the capital, but at a rate less than the statutory percentage) an amount which would bring the interest earned on the capital up to the statutory percentage (in this case 6 per cent. in the case of a business owned by a company or body corporate and 8 per cent. in other cases) is to be added to the profits standard (*n*).

An application may be made to the Commissioners of Inland Revenue (*o*):

- (1) For an increase in the statutory percentage as respects any class of trade or business; or
- (2) For a calculation of the percentage standard in the case of any class of trade or business in which the amount of capital actually employed in the trade or business is, owing to the nature of the trade or business, small compared with the capital necessarily at stake for that trade or business, by reference to some factor other than the capital of the trade or business, or to some additional factor; or
- (3) For an alteration of the pre-war standard of profits as respects capital employed for the purpose of war materials or for munitions work, and which could not be expected to be remunerative or wholly remunerative, except in time of war, in a business which has been wholly or mainly carried on for those purposes.

If such an application be made, the Commissioners, unless

(*m*) Finance Act, 1917, s. 26 (7).

(*n*) Principal Act, s. 41 (4).

(*o*) Ibid. s. 42.

they are of opinion that the application is frivolous or vexatious, or relates to matters already decided by a Board of Referees, are to refer the case to a Board of Referees, who may make an order as the case requires. (See "Board of Referees.") And on any such order being made the provisions as to excess profits duty are to have effect as from the date named in the order as if the percentage or standard named in the order was substituted for the percentage or standard fixed by the Act; and where in pursuance of any such order the statutory percentage is increased or the percentage standard is altered as respects any class of trade or business, the statutory percentage is to be increased and the percentage standard is to be altered respectively for all the purposes of excess profits duty as respects any trade or business belonging to that class.

These provisions as to increase of the statutory percentage or calculation of the percentage standard and as to alteration of the pre-war standard by the Board of Referees apply to any sub-division of a trade or business based upon any special feature of the trade or business or on locality as they apply to a class of trade or business, in any case where the Board of Referees are of opinion that the sub-division can properly be dealt with separately.

The Commissioners may, if they think fit, refer to the Board of Referees any application under sect. 42 above as respects a class of trade or business, although the application may relate to matters already decided by the Board, and the Board may, if they think fit, on cause being shown by additional evidence or otherwise, re-open the case and make any order which they could have made on an application relating to matters not already decided by them, and may revise any order previously made by them affecting that class of trade or business, and any such order or revised order shall as from such date as may be specified therein, apply and have effect in lieu of any previous order relating to the same matter (*p*).

The statutory percentage for the purpose of calculating the

pre-war standard of profits when the latter are ascertained on a percentage basis, has been increased in a number of trades. The decisions of the Board of Referees are announced, shortly after being made, in the London Gazette. The Accountant (*pp*) has published comprehensive lists of the decisions from time to time, and the list set out in Appendix B hereto appeared in the issue of that journal for the 16th November, 1918 (p. 269).

The provisions governing the pre-war standard of profits are contained largely in Schedule 4, Part II. of the principal Act. On the application of a taxpayer in any particular case on certain grounds the Commissioners have power to allow such modifications of any of the provisions of the schedule as they think necessary to meet the particular case (*q*), and there is an appeal to a Board of Referees.

(5) *Pre-war standard in the case of small businesses.*

Special provision is made for the case where the pre-war standard of profit does not exceed 500*l.*, and the profits of the accounting period, after any adjustment in respect of increased or decreased capital, are less than 2,000*l.* (*r*). In such a case sect. 38 (1) of the principal Act is to have effect as though for 200*l.* there were substituted 200*l.* plus one-fifth of the amount by which the profits of the accounting period are less than 2,000*l.* In other words, in the above case the duty payable is the proper percentage of the profits above the sum of the following, viz.:—

- (a) The pre-war standard;
- (b) 200*l.*; and

(*pp*) A weekly journal published from 34, Moorgate Street, E.C. 2. The editor has kindly given permission for reproduction of the list compiled for that journal.

(*q*) Principal Act, s. 40 (3). See "Wear and Tear," under which heading the provisions empowering a modification are more fully set out.

(*r*) Finance Act, 1917, s. 26 (4).

- (c) One-fifth of the amount by which 2,000*l.* exceeds the profits of the accounting period, after making any adjustment for increased or decreased capital.

The provision (r) goes on: "So, however, that if there has been a loss in the accounting period, then for the purpose of ascertaining the amount of any repayment or set-off under the principal Act the addition allowed shall be such as if there had been neither profit nor loss."

The qualification quoted is rather obscure, but seems to mean that where there is a loss the addition allowed shall be one-fifth of 2,000*l.*, or in other words 400*l.*, so that for the purpose of ascertaining the amount of any repayment or set-off the calculation shall be as follows, viz.:—

$$(a) \text{ pre-war standard} + (b) 200l. + (c) 400l.$$

If this be the meaning, and it is difficult to see what other was intended, the provision might have been phrased much more clearly. Moreover, if it had been intended that an addition of 200*l.* only should be allowed, as in the ordinary case, this could have been easily stated.

Where the accounting period covers less than a year, the above provisions are to have effect as if there were substituted for 2,000*l.* and 200*l.* respectively, a proportionately reduced amount.

The above provisions are to apply where the pre-war standard exceeds 500*l.*, subject to the qualification that the amount of the addition is to be reduced by the amount by which the pre-war standard exceeds 500*l.* So that, for example, if the pre-war standard is 600*l.* and the profits of the accounting period are 1,000*l.*, then the calculation would be—

(a) Standard profits, 600*l.*

(b) Plus 200*l.*

(c) Plus 100*l.*; being  $\frac{(2,000l. - 1,000l.)}{5} - (600l. - 500l.)$

In the example, therefore, the duty would be a percentage of the surplus profits over 900*l.*

(r) Finance Act, 1917, s. 26 (4).

*Separate industries carried on by same proprietor.*

Where the Commissioners are satisfied—

- (a) That in connection with any trade or business two or more distinct and separate industries are carried on in separate establishments, and with books kept in such a manner that the profits in respect of each industry can be readily ascertained; and
- (b) That in any year by reference to which the pre-war standard of profits is calculated a loss has been sustained in respect of any one or more of such industries;

the Commissioners may, in computing the profits standard, disregard that loss (s).

Nice questions may arise as to what are distinct and separate industries, *e.g.*, an engineering firm may have works for manufacturing tramcar bodies, and other works for manufacturing electric motors for the tramcars, and for the electric trade generally. And some firms may carry on coal mines, coke ovens, iron mines, ore smelting, engineering, &c. The question will, however, be one of fact in every case.

(s) Finance Act, 1917, s. 26 (5).

## CHAPTER III.

### COMPUTATION OF PROFITS IN ACCOUNTING PERIOD.

#### (1) *Generally.*

THE profits arising from any trade or business are to be separately determined for the purpose of excess profits duty (*a*), but are to be so determined upon the same principles as the profits of the trade or business would be determined for the purpose of income tax subject to the modifications set out in the Act, which are as follows:—

- (a) The profits are to be taken to be the actual profits arising in the accounting period, and are not to be computed by reference to any other year, or an average of years (*b*).
- (b) Interest on money borrowed for the purpose of the trade or business may be deducted before the profit is arrived at.
- (c) Rent or royalties may be deducted.
- (d) Other payments, income tax on which is collected at the source (not being payment of dividends or payments for the distribution of profits), may be deducted.
- (e) Profits or gains arising from land, tenements or hereditaments forming part of the assets of the trade or business are to be included in arriving at the profits (*c*).

The principal Act also provides that deductions for wear and tear or for any expenditure of a capital nature for renewals, or for the development of the trade or business or otherwise in respect of the trade or business, shall not be allowed, except

(*a*) Principal Act, s. 40 (1).

(*b*) Ibid. 4th Sched., Part I. (1).

(*c*) Ibid. 4th Sched., Part I. (2). See *Inland Revenue v. Guthrie, Craig, Peter & Co.* (1918), 55 Sc. L. R. 659.

such as may be allowed under the Income Tax Acts, and if allowed shall be only of such amount as appears to the Commissioners of Inland Revenue to be reasonably and properly attributable to the year or accounting period (d). Much controversy has taken place over this question of wear and tear and depreciation generally since excess profits duty was first imposed, and traders have now obtained much more liberal treatment than indicated in this very restricted provision for wear and tear. (See Chapter on Wear and Tear.)

If a tied house be let by the owner, a brewer, at less than the annual value thereof under Schedule A of the Income Tax Acts, he is entitled to an allowance in respect of the difference in computing his profits for excess profits duty purposes (dd).

The amount agreed to be paid as a penalty by the trader for having infringed certain Orders and Proclamations with regard to the requirements of the Commissioners of Customs and Excise is not a commercial loss, and cannot be deducted from profits for excess profits duty purposes (e). Nor can, e.g., the cost of reducing capital, which is not a trading expense.

In arriving at the profits, deductions are not allowed on account of liability to pay or the payment of income tax or excess profits duty, but a deduction is to be allowed for any sum which may have been paid in respect of the profits on account of any excess profits duty or similar duty imposed in any country outside the United Kingdom (f). Further relief is provided for by the Finance Act, 1917 (g), which gives His Majesty in Council power to make arrangements with the Government of any of His Majesty's possessions or of any territory under His Majesty's protection (gg), whereby only the duty which is higher in amount (*i.e.*, the duty payable in the Possession or territory or the duty payable in the United Kingdom)

(d) 4th Sched., Part I. (3).

(dd) *Weller v. Inland Revenue Commissioners*, 35 T. L. R. 465.

(e) *Commissioners of Inland Revenue v. E. C. Warne & Co., Ltd.*, L. T. J., 19th April, 1919.

(f) 4th Sched., Part I. (4).

(g) 7 & 8 Geo. 5, c. 31, s. 23.

(gg) Finance Act, 1919, s. 34.

is to be payable. If the Commissioners are satisfied that any case is one to which any arrangements provided for by the Act relate, they may allow or make such remission or adjustments of duty as may be necessary to give effect to such arrangements, so however that the effect of such remission or adjustments shall not be less favourable than the relief in lieu of which they are allowed or made (*h*).

In arriving at the profits, the amount deducted for the remuneration of directors, managers and persons concerned in the management of the trade or business is not to exceed the sums allowed for those purposes in the last pre-war trade year or a proportionate part thereof (as the case requires), unless the Commissioners of Inland Revenue, owing to any special circumstances or to the fact that the remuneration of any managers or managing directors depends on the profits of the business, allow a larger sum (*i*). It is believed that the Commissioners in practice allow the sums actually paid to directors, managers and persons concerned in the trade or business unless those sums have been unreasonably augmented during the war, and that the Commissioners are more prone to question any such payments where they are made to persons who are largely interested in the capital. It is open to considerable doubt, however, whether the Commissioners are entitled to question salaries or remuneration agreed to be paid to managers, &c. who were first employed in the trade or business during the war.

In *R. v. Inland Revenue Commissioners (Ex p. Fenwick & Co., Ltd.)* (*k*), two managing directors were, by agreement dated 1912, remunerated by a salary plus 10 per cent. of the company's net profits after making certain deductions. The Commissioners served notice of assessment to excess profits duty in respect of the period ending 31st December, 1915, and in arriving at the amount of assessment, the Commissioners limited

(*h*) Finance Act, 1917, s. 23 (2).

(*i*) Principal Act, 4th Sched., Part I. (5).

(*k*) 86 L. J. K. B. 1280; (1917) W. N. 364; 34 T. L. R. 118; affirmed on appeal, *Inland Revenue Commissioners, Wm. France, Fenwick & Co., Ltd., Ex p.*, 87 L. J. K. B. 198.

the remuneration to be allowed to the managing directors to the amount allowed in the last trade year before the commencement of war plus 2,000*l.* in each case, and refused any further allowance in respect of the remuneration. It was held by the Court of Appeal that under Schedule 4, Part I. (5) above, the Commissioners had a discretion not merely as to finding special circumstances, but also as to whether they would, in a case where the remuneration depended on the profits, direct that the deduction to be allowed for such remuneration should exceed the sum allowed for that purpose in the last trade year before the outbreak of war.

No right of appeal exists under the principal Act, s. 45 (5), against the decision of the Commissioners of Inland Revenue under the above provisions refusing to allow a higher deduction in respect of the remuneration of directors, &c. than the sum allowed in the last pre-war year. The discretion of Commissioners of Inland Revenue on the matter is absolute (*l.*).

The Finance Act, 1916, s. 49 (1), provides that where the pre-war standard of profits is taken to be the percentage standard, or is calculated by reference to the statutory percentage in the case of any trade or business owned or carried on by a company or other body corporate whose directors have a controlling interest, the Commissioners of Inland Revenue may, if they think fit, as respects any accounting period, including a past accounting period, for the purpose of the provisions relating to the statutory percentage, and for the purpose of the determination and computation of profits under the principal Act, Schedule IV., Part I., treat the company as if it were a firm, and not a company or body corporate, and the directors or any of them as if they were partners in the firm (*m.*).

This provision only applies where the pre-war standard is a percentage standard. In such a case the Commissioners may

(*l.*) *Williamson Film Printing Co., Ltd. v. Inland Revenue Commissioners*, 88 L. J. K. B. 24; (1918) 2 K. B. 720; 119 L. T. 374; 34 T. L. R. 545, Sankey, J.; *Inland Revenue Commissioners v. Auld, Pemberton & Co.* (1919), 2 I. R. 66.

(*m.*) Finance Act, 1916, s. 49 (1).

allow the larger percentage given to non-corporate firms or persons, but on the other hand may calculate the profits without making any deduction for directors' remuneration, inasmuch as in the calculation of profits of a firm no allowance is made for remuneration of or salaries to partners. Sub-sect. 2 of the last-named section provides that if as regards any accounting period ending on or after the 1st July, 1915, the Commissioners refuse to allow a deduction in respect of any increase in the remuneration of directors of any trade or business, and the taxpayer is required to pay excess profits duty in respect of the disallowed deduction, the taxpayer shall be entitled to recover from any such director the amount which the taxpayer has paid by way of excess profits duty in respect of the increase; but any amount so recovered shall, unless the Commissioners otherwise direct, be treated as excess profits duty paid by the director from whom it is recovered, and not as excess profits duty paid by the taxpayer (*n*).

In the above section the expression "directors" includes any managers or persons concerned in the management of the trade or business who are remunerated out of the funds of the trade or business (*o*).

As the amount of excess profits duty disallowed, and recovered by the taxpayer from the director, is to be treated as excess profits duty paid by the director from whom it is recovered, it cannot be treated as a payment by the taxpayer for the purposes of income tax (*p*). On the other hand, as "offices and employments" are specially exempted from excess profits duty, it is difficult to see why it should be treated as excess profits duty paid by the director. If he is paid wholly or partly by commission on profits, he is no doubt liable on any excess over his pre-war standard (*q*), unless he is a whole time servant (*r*). But

(*n*) Finance Act, 1916, s. 49 (2).

(*o*) Ibid. s. 49 (3). Sect. 49, sub-ss. (2) and (3) apply for the purpose of munitions exchequer payments: Finance Act, 1917, s. 24 (4).

(*p*) See principal Act, s. 35.

(*q*) Ibid. s. 39.

(*r*) *Robins v. Commissioners of Inland Revenue*, Times Newspaper, 24th June, 1919.

if he is merely paid a fixed remuneration there is no express provision in any of the Acts making him liable for the duty. On the other hand there is no provision enabling him to recover the amount from the Commissioners.

It has been held that sub-sect. 2 of sect. 49, above, of the Finance Act, 1916, is not limited to the cases governed by sub-sect. 1, and that the amount paid by a partnership firm as excess profits duty in respect of increase in the remuneration of a person who was a "manager" or "a person concerned in the management of the trade or business" could be recovered from such a person (*s*). This decision was approved and followed in *Collette v. Lockie, Pemberton & Co.* (*t*).

No deduction from the profits is allowed in respect of any transaction or operation of any nature where it appears, or to the extent to which it appears, that the transaction or operation artificially reduces the amount to be taken as the amount of the profits of the trade or business for the purposes of the Act (*u*), e.g., any transfer to reserve to meet depreciation of any kind except as allowed for the purposes of the Acts. (See chapter on Wear and Tear and Depreciation.)

Where a company, either in its own name or in that of a nominee, owns the whole of the ordinary capital of any other company carrying on the same trade or business, or so much of that capital as under the general law a single shareholder may legally own, the provisions of the Act as to excess profits duty and the pre-war standard of profits shall apply as if that other company were a branch of the first named company, and the profits of the two companies shall not be separately assessed (*x*). This provision will go in relief of large companies who have formed subsidiary companies to carry on the same trade or business in different districts, e.g., tramway companies, or railway companies owning the shares in other rail-

(*s*) *Thompson Bros. v. Amis*, (1917) 2 Ch. D. 211; 116 L. T. 719.

(*t*) (1918) W. N. 262; 53 L. J. 278; 145 L. T. J. 234.

(*u*) Principal Act, 4th Sched., Part I. (5). See for penalty for fictitious or artificial transaction, principal Act, s. 44 (3).

(*x*) 4th Sched., Part I. (6).

way companies and the like. Under the general law relating to companies, the only restriction on the number of shares to be held by one person or company in any company is that if it is not a private company there must be not less than seven shareholders (*y*). A shareholder, therefore, may legally hold all the share capital in a company less the six shares which must go amongst the other six shareholders. The provision refers, however, to the "whole of the ordinary capital," and questions may arise as to whether this means "ordinary share capital" or the whole of the share capital (whether consisting of ordinary shares or ordinary and preference shares), as distinguished from capital raised by borrowing. Possibly it means ordinary share capital, because money obtained by borrowing is not recognized as capital at all for the purpose of the Acts (*z*).

In *Dunlop Rubber Co., Ltd. v. Commissioners of Inland Revenue* (*a*), it appeared that the Dunlop Company owned the whole of the shares in five companies formed to acquire, take over, work and develop rubber estates in the East. The sole object of the Dunlop Company in acquiring the shares of the five companies was to ensure a supply of raw rubber to be used by them in their business. Through directors appointed by themselves they were able as owners of all the shares to control the operations of the five companies.

The Dunlop Company contended that Rule 6 (*supra*) did not apply to them, because they did not carry on the same trade or business as that carried on by the five companies, and that the computation of their liability to excess profits duty should be made exclusive of the results disclosed by the accounts of the five companies. The special Commissioners found that the operations of the five companies, together with the operations of the Dunlop Company, constituted in fact one and the same trade or business, and they decided in favour of the Commissioners of Inland Revenue. Mr. Justice Rowlatt, on appeal, held that the words "carrying on the same trade or business"

(*y*) Companies (Consolidation) Act, 1908, s. 2.

(*z*) Principal Act, 4th Sched., Part III. (2).

(*a*) 35 T. L. R. 432. See *Times*, April 9th, 1919.

clearly meant carrying on the same line of business in a commercial sense. The Commissioners had construed the words as if they meant "carrying on a different part of what is essentially one business," but he could not read those words into the section. He therefore allowed the appeal.

A deduction is to be allowed in estimating the profits where

- (a) The percentage standard is adopted as the pre-war standard of profits (*b*), or where the capital account shows a debit balance (*c*); and
- (b) The net result of the trade or business during the three last pre-war trade years has shown a loss; and
- (c) Any part of the profits has been applied in extinction of the loss or debit balance.

The deduction to be allowed is an amount equal to the amount of profits applied in extinction of the loss or debit balance (1) and (2).

Income received from investments is not to be included in profits except in the case of life assurance businesses, and businesses where the principal business consists of the making of investments. In cases where such income is taken account of -

- (a) Any variation in the value of any of those investments which appears to the Commissioners of Inland Revenue not to be due to a variation in profits shall also be taken into account; and
- (b) Where the income has been derived from profits in respect of which any payment or repayment of excess profits duty has been made under this Act, such deduction or addition shall be made in computing the profits as will make proper allowance for that payment or repayment of duty (*d*).

Under (a), above, it appears clear that before arriving at the profits for excess profits duty purposes in the case of life assurance businesses, and businesses where the principal business

(*b*) Principal Act, 4th Sched., I. (7).

(*c*) Finance Act, 1916, s. 50.

(*d*) 4th Sched., Part I. (8).

consists of the making of investments, any depreciation of securities due to the war, or to the fact that Government loans to such large amounts have been put upon the market, may be allowed for.

Sub-par. (b) makes it clear that excess profit duty is not to be paid twice in respect of any income, once before the income is paid over to the business of whose profits it is to form part, and again as part of the profits of the receiving business.

A company carrying on a fire insurance and employers' liability insurance business, is not, by reason of the investment of its funds, a company whose "principal business consists in making investments" for the purpose of computing excess profits duty. Its accumulated profits which have been invested and form a reserve fund cannot be treated as capital employed in the business; and as there is no statutory obligation on a limited company to replace capital lost by depreciation in securities, such a company is not entitled to an allowance out of profits for the sums set aside to make good such depreciation (e).

In the case of contracts performed partly in one accounting period and partly in another the entire profits or loss, or the estimated profits or loss are to be apportioned between the accounting periods having regard to the extent to which the contract was performed in each such period unless the Commissioners of Inland Revenue, owing to any special circumstances, otherwise direct (f). This provision has not always been strictly adhered to, and owing to the provisions for repayment or set-off, &c. it is not likely, as the excess profits duty has spread over a number of years, that non-compliance therewith has made or will make any material difference to the duty paid.

The calculation of profits in the accounting period is affected by fluctuations of capital. If there has been an increase of capital a deduction is to be made from the profits of the accounting period at the statutory percentage per annum on the amount

(e) *Catholic Church Insurance Co. v. Inland Revenue Commissioners* (1918), 2 I. R. 510, C. A. (Ireland).

(f) Principal Act, 4th Sched., Part I. (11).

by which the capital has been increased for the whole accounting period if the increased capital has been employed for the whole period, and if it has been employed for part only of the accounting period for that part of the accounting period (*g*). The interest allowed on any increase of capital is, in the case of a business owned or carried on by a company or other body corporate, 9 per cent., and in the case of any other trade or business, 11 per cent. (*h*).

If there has been a decrease of capital an addition is to be made to the profits of the accounting period at the statutory percentage per annum on the amount by which the capital has been decreased, for the whole accounting period if the capital has been decreased for the whole accounting period, and if the capital has been decreased for part only of the accounting period, for that part of the accounting period. In the case of a decrease of capital the statutory percentage is not altered by the Finance Act, 1917 (*i*), and therefore is to be calculated at the rate fixed by the principal Act, *i.e.*, 6 per cent. in the case of a company or other body corporate and 7 per cent. in other cases (*k*).

The reason for allowing deductions to be made from the profits in the accounting period in respect of increased capital and requiring additions to be made to such profits in respect of decreased capital, is, obviously, that if the proprietor of a business introduces more capital he ought to be allowed interest on that capital before his liability to duty is assessed, and if he takes part of his capital out of the business presumably he will get interest elsewhere on the part he withdraws, and so should make an addition to the profits.

It is to be observed that profits arising and accumulating during the accounting period are not, during that period, to be treated as capital employed in the business so as to give rise to a deduction for interest on further capital provided (*l*).

(*g*) Principal Act, s. 41 (1).

(*h*) See principal Act, s. 40, and Finance Act, 1917, s. 26 (1).

(*i*) See sect. 26 (2).

(*k*) Principal Act, s. 40 (2).

(*l*) Finance Act, 1916, s. 52.

Capital for the above purpose is to be taken to be increased or decreased, as the case may be, where the pre-war standard is a profits standard, if the capital exceeds or is less than the average amount of capital employed during the pre-war year or years by reference to which the profits standard has been arrived at, and where the pre-war standard of profits is a percentage standard, if the capital exceeds or is less than the capital on which the percentage standard has been calculated (*m*).

Where capital which has been first brought into any business within six years (*n*) before the 1st August, 1914, has only commenced to be remunerative or fully remunerative in the accounting period, an amount equal to the statutory percentage or (where interest has been earned on the capital, but at a rate less than the statutory percentage) an amount which would bring the interest earned on the capital up to the statutory percentage, as the case may be, shall be added to the profits standard.

### (2) Local authorities.

As to the profits of a local authority from any trade or business carried on by that authority, there is to be deducted from those profits the total amount which is required to be raised by the authority, out of the rates or otherwise, for sinking fund purposes in connection with the trade or business (*o*). In other words the amount required for the sinking fund may be deducted before the profits for excess duty purposes are arrived at. Though the Act does not say so, this obviously means only the amount of sinking fund attributable to the accounting year (*oo*).

### (3) Industrial and provident societies.

In the case of societies registered under the Industrial and Provident Societies Acts, there are two methods of computing

(*m*) Principal Act, s. 41 (3).

(*n*) Principal Act, s. 41 (4), and Finance Act, 1917, s. 26 (7).

(*o*) Principal Act, 4th Sched., Part I. (9).

(*oo*) See *Port of London Authority v. Commissioners of Inland Revenue*, (1919) W. N. 224, for decision as to what constitutes a trade or business under the Acts.

excess profits, either of which may be adopted at the option of the society. The first is provided by the principal Act (*p*). According to this method the profit per member for the accounting period (including any surplus arising from transactions with members) is to be ascertained, and the excess of such profit over the profit per member in the pre-war trade year or average of years taken as the basis of computation for the purpose of the pre-war standard of profits, is to be multiplied by the number of members in the accounting period, and the excess profits duty is charged upon the result.

The alternative method is provided by the Finance Act, 1917 (*q*). According to this method—

- (a) The amount of excess profit (if any) arising on commercial transactions with non-members is to be ascertained separately in accordance with the general principles of the principal Act.
- (b) The profit or surplus arising from transactions with members per pound sterling of turnover in the accounting period is to be ascertained. The excess of the profit or surplus so found, over the like profit or surplus in the pre-war trade year or average of years taken as the basis of computation for the purpose of the pre-war standard of profits, is to be multiplied by the number of pounds sterling of turnover in the accounting period.

Excess profits duty is to be charged upon the sum of the amounts ascertained as provided in (a) and (b) above.

The method of computation allowed by the Finance Act, 1917, is not to be adopted for the purpose of ascertaining the amount of any deficiency of profits (below the excess profits duty standard) or any loss for the purpose of the principal Act, s. 38 (3) (repayment or set-off), and any duty computed under that method of computation is not to be repaid or remitted by reason of a deficiency or loss in any other accounting period

(*p*) 4th Sched., Part I. (10).

(*q*) Sect. 26 (8).

computed as provided by the method set out in the principal Act (*r*).

The Commissioners of Inland Revenue may make regulations for carrying the method provided by the Finance Act, 1917, into effect, and may provide for defining and ascertaining turnover, and the profit or surplus per pound sterling, and for the application of that method to new societies, and for extending, subject to such modifications as may be prescribed, to cases where duty is computed according to that method, any of the general principles of the principal Act as to relief from duty (*s*).

The Commissioners of Inland Revenue have power in any particular case on certain grounds to allow such modifications of the provisions of the Fourth Schedule to the principal Act (Part I. of which schedule deals with computation of profits in the accounting period) as they think necessary to meet the particular case (*t*); and there is an appeal to a board of referees.

#### *(4) Sale of trading stocks.*

Where trading stock (*u*) which belongs, or formerly belonged, to any trade or business, is sold after the 22nd April, 1918, otherwise than in the ordinary course of business, the profits arising from such sale are to be deemed to be profits arising from a trade or business for the purposes of excess profits duty, and where any such sale takes place after a trade or business has ceased, the trade or business is to be deemed to have been carried on up to and including the date on which the sale takes place, and the accounting period is to be such as the Commissioners of Inland Revenue may determine (*x*).

(*r*) Finance Act, 1917, s. 26 (8).

(*s*) Ibid. s. 26 (8).

(*t*) Principal Act, s. 40 (3). See chapter on "Wear and Tear."

(*u*) "Trading Stock" includes (a) any goods such as are sold in the ordinary course of a trade or business whether in a finished condition or not; and (b) any raw or other materials used in the manufacture or preparation of any such goods: Finance Act, 1918, s. 35 (5).

(*x*) Finance Act, 1918, s. 35 (1).

Where the business has ceased, but is deemed for the purpose of the above provision to have been carried on for any period--

- (a) The person by whom or by whose authority any trading stock is sold, whether as owner, agent, liquidator, trustee or receiver, or other person acting in a similar capacity, is to be assessed for the duty, and the duty is recoverable from him, and nothing in the principal Act, s. 45 (2), is to render the purchaser of the stock liable (*y*).
- (b) The appointment of the liquidator, trustee, or receiver or other person is not to be treated as a change of ownership, and the principal Act, s. 38 (3) (repayment and set-off), and the Fourth Schedule, Part I., 7 (allowance of a deduction for profits applied in extinction of losses) as amended by any subsequent enactment (see *supra*), are to have effect as if the profits arising from the sale of the trading stock had been made by the owner of the business before the appointment of the liquidator, trustee, receiver, or other person, and as if the duty were payable by him.

Where trading stock is sold together with other assets of the business, the part of the consideration attributable to the stock is to be determined by the Commissioners of Inland Revenue, subject to appeal to the General or Special Commissioners, and the part of the consideration so determined is to be deemed to be the price paid for the trading stock by the purchaser (*z*).

Any trading stock disposed of otherwise than by way of sale is to be deemed to have been sold, and any trading stock so disposed of, and any trading stock sold for a consideration other than cash, not being a consideration the value of which can be readily ascertained, is to be deemed to have realized the market price of the day (*a*).

No person is, after the 14th May, 1918, to dispose otherwise

(*y*) Finance Act, 1918, s. 35 (2).

(*z*) Ibid. s. 35 (3).

(*a*) Ibid. s. 35 (4).

than by way of sale of any trading stock unless he has previously made provision to the satisfaction of the Commissioners of Inland Revenue for securing the payment of any duty chargeable as above, and any attempted disposal in contravention of this provision is void and of no effect (b).

There are a number of methods in which stock may be disposed of otherwise than in the ordinary course of business. Probably the most usual case would be sale by a liquidator. There might also be sale on the winding up of a partnership, by auction or otherwise, sale by a receiver for debenture holders, &c. Or the transaction might not be a sale at all; it might be a gift. All such cases are provided for. After the 14th May, 1918, any disposition other than a sale is void, and therefore no title passes to the purchaser, unless the duty is previously provided for as above.

The term "disposal of trading stock" above does not include disposal by way of testamentary disposition.

(b) *Ibid.*

## CHAPTER IV.

## COMPUTATION OF CAPITAL.

THE question of capital is constantly arising in connection with excess profits duty, owing to the fact that an addition or reduction has to be made to or from the profits of the accounting period in respect of any decrease or increase in capital (*a*). Part III. of the Fourth Schedule to the principal Act deals with the computation of capital and lays down rules for ascertaining the same.

The amount of the capital of a trade or business, so far as it does not consist of money, is to be taken to be—

- (a) So far as it consists of assets acquired by purchase, the price at which those assets were acquired, subject to any proper deductions for wear and tear or replacement, or for unpaid purchase money.
- (b) So far as it consists of debts due to the trade or business, the nominal amount of those debts subject to any reduction which has been allowed in respect of those debts for income tax purposes.
- (c) So far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets of the trade or business subject to any proper deductions for wear and tear or replacement (*b*).

The object of the above regulations is obviously to ensure that the figure which is placed in the capital account for the purpose of excess profits duty shall represent the actual value, during the accounting period, of the assets in question. For example, in the case of assets acquired by purchase ((*a*) above),

(*a*) See Chapter III.

(*b*) Principal Act, 4th Sched., par. 1.

such as plant and machinery purchased, say, three or four years before the accounting period, the figure to appear as the capital value would be the amount actually paid, depreciated from year to year upon the proper scale applicable to the particular plant and machinery. And similarly, if part of the purchase money is unpaid, it is only the amount actually paid which is debited to the capital account, as the balance owing is not capital in the business.

Similarly in regard to debts due to the trade or business, the amount to go down in the capital account is the nominal amount less whatever allowance has been made for income tax purposes for bad debts, &c. In case (c) above, assets not acquired by purchase, the amount to be debited to capital is the actual value when acquired, less proper depreciation. It is therefore impossible to increase or decrease the figures representing in the books the value of the above assets, to correspond with any increased or reduced price which they would bring owing to market conditions.

Accumulated profits employed in the business are to be treated as capital (c). But for the purpose of excess profits duty the profits arising and accumulating during any accounting period are not, during that period, to be treated as accumulated profits or as capital employed in the trade or business (d). For example, if the accounting period extends from the 1st April to the 31st March, inclusive, say, no profits accumulated between those dates are to be treated as capital for excess profits duty purposes. But if appearing in the books on the 1st April of the following year as capital employed in the business, then they are treated as capital for the purpose of this duty.

Any capital the income of which is not taken into account for the purposes of Part I. of the Fourth Schedule (*i.e.*, for the purpose of computing the profits of a trade or business), and any borrowed money or debts are to be deducted in computing the amount of capital for excess profits duty purposes (e).

(c) Principal Act, 4th Sched., Part III. (1).

(d) Finance Act, 1916, s. 52.

(e) Principal Act, 4th Sched., Part III. (2).

It will be remembered that in computing profits no account is to be taken of income received from investments except in the case of life assurance businesses and businesses where the principal business consists of making investments. Where no account is to be taken of the income the capital producing that income is also excluded by the above provision.

Where, however, money has been temporarily invested in war loans from the funds of the business, and is needed as part of the capital though temporarily invested in war loans, the Commissioners are prepared to treat it as capital just as if it were money at the bank.

Profits or gains arising from lands, tenements, &c. forming part of the assets are to be taken into account. Therefore the capital value thereof has to be included in computing capital. It will be seen that borrowed money (*e.g.*, bank overdrafts, money borrowed on debentures, mortgages, &c.) and debts owing are to be excluded, leaving the capital for the purposes of excess profits duty at the amount found by the owner of the business out of his own moneys.

If an asset has been acquired otherwise than for cash the cost price is to be taken to be the value of the consideration given in exchange for that asset at the time the asset was acquired (*f*).

Where a trade or business has been converted into a company and the shares in the company are wholly or mainly held by the person who was the owner of the trade or business, no value is to be attached to the shares so far as they are represented by goodwill or otherwise than by material assets of the company, unless the Commissioners of Inland Revenue in special circumstances otherwise direct.

Patents and secret processes are to be deemed to be material assets (*g*). Therefore their price, if paid for in cash, or their value as represented by shares, if handed over in return for

(*f*) Principal Act, 4th Sched., Part III. (2).

(*g*) Ibid. 4th Sched., Part III. (3).

shares, is in any case to be included in the computation of capital.

The Commissioners of Inland Revenue have power in certain cases on the application of a taxpayer to allow such modification of the Fourth Schedule to the principal Act (Part III. of which lays down the rules for calculation of capital) as they think necessary to meet the particular case, and there is an appeal from their decision to a board of referees (*h*).

Where the Commissioners of Inland Revenue are satisfied that during the last six pre-war trade years, owing to trading losses,

- (a) Any former assets have ceased to form part of the assets,  
or
- (b) That the money borrowed, or the debts, have increased,  
the Commissioners shall, for the purpose of ascertaining the capital of the business, in any case where the percentage standard is adopted, compute the capital as though there had been no such loss of assets or increase of borrowed money or debts (*i*).

Where the percentage standard is adopted as the means of fixing the standard of profits, it is obviously to the interests of the taxpayer to have the capital on which the percentage is calculated as large as possible. The foregoing provision enables him, in the cases mentioned, to bring into his capital account assets which have been lost, or to calculate his capital without deducting any increase in money borrowed, or debts incurred.

(*h*) Sect. 40 (3). See chapter on "Wear and Tear" where the provision for modification of the schedule is more fully set out.

(*i*) Finance Act, 1917, s. 26 (6).

## CHAPTER V.

## MINERALS AND SHIPPING.

(1) *Minerals.*

THE principal Act provides (*a*) that where the amount payable to any person as rent in respect of the right to work minerals, or of any mineral wayleaves (in cases where the right to work the minerals and the mineral wayleaves are not part of the assets of the trade or business of the person receiving the rent for the right to work the minerals, or for the mineral wayleaves) (*b*), varies according to the price of the minerals, and the amount so payable in respect of any working year ending on any date after the commencement of the present war (in the section referred to as the accounting year<sup>1</sup>), exceeds the pre-war standard of that rent, there shall be paid as an addition to any mineral rights duty payable or paid, either directly or by deduction, by reference to the amount of the rent paid in that working year, by that person (*i.e.*, the person receiving the rent (*b*), in that section referred to as the person liable), an amount equal to 50 per cent. of that excess.

The pre-war standard of rent, for the purposes of the section, is to be taken to be the average of any two of the three last pre-war rent values, to be selected by the taxpayer, and in cases where the minerals have not been worked or the wayleaves have not been let throughout the three years by reference to which the three last pre-war values are to be calculated, or for any other reason there are no proper data for ascertaining the pre-war rent values, such pre-war standard of rent is to be taken to be such an amount as may be fixed by the Commissioners of Inland Revenue, having regard to the data afforded by the working and price of minerals in like circum-

(*a*) Sect. 43 (1).

(*b*) Finance Act, 1916, s. 46 (2).

stances, subject nevertheless to the same appeal as that to which the assessment of duty by the Commissioners is subject under Part I. of the Finance (1909—10) Act, 1910 (*c*).

The pre-war rent value, as respects each of the three years immediately preceding the first accounting year, is to be taken to be the same to which the rent for the accounting year would amount if the rent, so far as variable according to price, were based on the average prices governing the payment of the rent in that year.

The 50 per cent. duty was, by the Finance Act, 1916 (*d*), increased to 60 per cent. in the case of minerals which became subject to a mining lease after 4th August, 1914, for all accounting years, and in the case of other minerals, for any accounting year ending after the completion of the first accounting year. The duty is further increased by the Finance Act, 1917 (*e*), to 80 per cent. for any accounting year commencing on or after 1st January, 1917, or in the case of an accounting year which commenced before that date but ends after that date, 80 per cent. is payable in respect of so much of the excess as may be apportioned under the Finance Act, 1917, to the part commencing on that date.

The last-named Act provides (*c*) that where it is shown to the satisfaction of the Commissioners that the amount payable as rent under any lease or agreement for a lease for any accounting year in respect of which, or any part of which, excess mineral rights duty is payable at the rate of 80 per cent. is not greater than the average amount payable as rent for the two pre-war years the prices in which are selected by the taxpayer for the purpose of determining the pre-war rent values of the rent for the accounting year, or would be reduced below that amount by the payment of excess mineral rights duty,

(*c*) 10 Edw. 7, c. 8. By sect. 33 any appeal is to one of a panel of referees, and an appeal lies from his decision to the High Court. Forms of notice of appeal can be obtained from the Commissioners of Inland Revenue, or the Surveyor of Taxes for the district. The notice must specifically set out the grounds of appeal, but the referee may allow the notice of appeal to be amended.

(*d*) Sect. 46 (1).

(*e*) Sect. 21.

no excess minerals rights duty or, as the case may be, such an amount of excess mineral rights duty only as would reduce the amount payable as rent for the accounting year to the said average amount is to be paid for that accounting year.

Where the accounting period covers a period partly before and partly after the 1st January, 1917, the total excess rent for any such accounting year is to be apportioned between the time up to and the time after that date, in proportion to the number of months before and after that date respectively (*f*).

By the Finance Act, 1919 (*g*), the rate of duty is reduced from 80 per cent. to 40 per cent. for any accounting year commencing on or after the 1st January, 1919, or in the case of an accounting year which commenced before that date but ends after that date, the rate is 40 per cent. as respects so much of the excess as may be apportioned to the part commencing on that date. The last-named Act also continues the relief contained in sect. 21 of the Finance Act, 1917, where the rent payable in the accounting period is not greater than the average of the two pre-war years (*h*).

It is to be observed that the duty on excess rent (*i.e.*, excess mineral rights duty) only applies where the amount of the rent varies with the selling price of the mineral. If it is based upon a fixed amount per ton, or is otherwise upon a fixed basis, as is often the case, no excess mineral rights duty is payable. Where the rental is based upon the selling price, it is obvious that the rental per unit—*e.g.*, per ton—may have increased considerably, while owing to the reduction of output the total rent payable may be stationary, or may be reduced. It is to meet such cases as this, and cases where, though the rent per unit has increased considerably, the total amount payable may be only slightly increased, that the proviso to sect. 21 of the Finance Act, 1917, is inserted—which reduces the duty payable in such a case to an amount which will leave the rent receivable for the accounting period as large in amount in the

(*f*) Finance Act, 1917, s. 27.

(*g*) Sect. 33 (1).

(*h*) Finance Act, 1919, s. 33 (2).

aggregate as the amount of the average rent in the two pre-war years selected for the purpose of determining the pre-war rent values.

The language of the principal Act as to mineral rights duty is very uncertain and involved. A short way of putting the effect of the provisions as to ascertainment of the duty appears from *Murray v. Inland Revenue Commissioners* (*i*). The excess mineral rights duty is to be ascertained by applying the average prices governing the payment of rent for each of the selected years to the output of each of the accounting years, and deducting the result from the rent so far as variable according to the price received for each of the accounting years, and then taking the statutory percentage of the difference.

In *Commissioners of Inland Revenue v. Lonsdale's Trustees* (*k*), by the terms of the lease the lessee was to pay a certain royalty per ton when the average selling price of coal did not exceed 6s. 6d. per ton. When the average selling price exceeded 6s. 6d. per ton, the royalty was to be increased by one-tenth of the excess. In April, 1914, before the commencement of the war, the parties agreed to raise the basis of the average selling price from 6s. 6d. to 7s. 6d. per ton. Mr. Justice Lush held that the basis of 6s. 6d. per ton fixed by the lease was one of the average "prices governing the payment of the rent" in the pre-war years, and that the pre-war rent values must be arrived at by ascertaining what the tonnage raised in the accounting year would have yielded by way of royalties in the pre-war years, taking 6s. 6d. and not 7s. 6d. as the basis of the average selling price in those years.

In the latter case the Court of Appeal stated that the referee had a discretion over costs, and declined to interfere with his refusal to award costs to either party.

In ascertaining the amount upon which the excess mineral rights duty is to be paid under the section, it is permissible to deduct income tax from the amount payable as rent, the rate of income tax to be deducted being that current for the

(*i*) (1918) 1 A. C. 543.

(*k*) 86 L. J. K. B. 1492; (1917) 2 K. B. 760; 88 L. J. K. B. 773, affirmed on appeal to H. L., L. T. J., 12th April, 1919.

accounting year and not the pre-war year. But in ascertaining the pre-war standard of rent income tax is also to be deducted at the rate payable in the accounting year (*l*).

The duty imposed by the principal Act is expressed to be payable "as an addition to any mineral rights duty." The mineral rights duty was imposed by the Finance (1909-10) Act, 1910 (*m*), at the rate of 1s. for every 20s. of the rental value of all rights to work minerals, and of all mineral way-leaves.

The principal Act does not define "minerals," but sect. 43 (7) thereof provides that expressions to which a special meaning is attached by Part I. of the Finance (1909-10) Act, 1910, shall have the same meaning in that section. On reference to the latter section, again there is no definition of the term "mineral," but by sect. 20 (5) mineral rights duty is not to be charged in respect of common clay, common brick clay, common brick earth, or sand, chalk, limestone, or gravel. As the duty on excess rental is to be an addition to mineral rights duty, and no such duty is payable in respect of the substances mentioned, it seems to follow that the duty on excess rental is not payable thereon.

It has been held that brine is a mineral within the Finance (1909-10) Act, 1910, s. 20, and a company pumping brine from beneath the surface of the earth is liable to pay mineral rights duty in respect thereof (*n*).

"Mineral wayleave" means any wayleave, airleave, waterleave, or right to use a shaft, granted to or enjoyed by a working lessee, whether above or under ground, for the purpose of access to or the conveyance of the minerals, or the ventilation

(*l*) *Commissioners of Inland Revenue v. Duke of Northumberland*, Ct. of Appeal, L. T. J., 19th April, 1919; 35 T. L. R. 433.

(*m*) 10 Edw. 7, c. 8, s. 20.

(*n*) *A.-G. v. Salt Union, Ltd.*, (1917) 2 K. B. 488; 117 L. T. 140. For decisions as to what are and what are not minerals for various purposes, see *Posse v. Wanman*, 14 M. & W. 859; *Glasgow Corporation v. Farie* (1888), 13 A. C. 690; *Scott v. Mid. Ry. Co.*, (1901) 1 K. B. 317; *N. B. Ry. Co. v. Budhill Coal Co.*, (1910) A. C. 116; *G. W. Ry. Co. v. Corpalla China Clay Co.*, ibid. 83; *Elvers v. Brigg Gas Co.* (1886), 33 Ch. D. 562; *Scott v. Mid. Ry. Co.* (1897), 13 T. L. R. 398; *Boileau v. Heath*, (1898) 2 Ch. D. 301.

or drainage of his mine, or otherwise in connection with the working of the minerals (*nn*).

Any amount payable in any accounting year by the lessee of minerals or wayleaves to a superior lessor as rent in respect of the minerals or wayleaves, is to be treated as a deduction from the amount payable to the lessee as rent for that year, and in computing the pre-war rent values a corresponding deduction is to be made on account of any such rent (*o*). Provision is here made for the case of an intermediate lessee, who on the one hand receives rent in respect of the right to work minerals or of any mineral wayleave, and on the other hand has himself to pay rent in respect thereof to a superior lessor. In such a case the rent he pays to his superior lessor is allowed for before he becomes liable to excess mineral rights duty, and a corresponding deduction is made in computing the pre-war rent values, so as to make the bases the same.

Any increment value duty (*p*) payable annually under sect. 22 of the Finance (1909–10) Act, 1910, when paid is to be treated as a deduction from the rent payable to any person in the year in which the duty is paid, and a corresponding deduction is to be made in computing the pre-war standard with which the rent for that year is to be compared (*q*). Sect. 22 (3) of the Finance (1909–10) Act, 1910, provides that increment value duty in respect of the increment value of minerals which are comprised in a mining lease or are being worked shall, where that duty is chargeable, be charged annually; and the increment value shall, instead of being estimated as a capital sum, be taken to be the sum (if any) by which, in each year during which the lease continues or the minerals are being worked, as the case may be, the rental value on which the mineral rights duty is charged in respect of the right to work minerals exceeds the annual equivalent of the original capital value of the minerals, or the capital value of

(*nn*) Finance (1909–10) Act, 1910, s. 24.

(*o*) Principal Act, s. 43 (3).

(*p*) For definition, see Finance (1909–10) Act, 1910, *supra*.

(*q*) Principal Act, s. 43 (4).

the minerals on the last preceding occasion on which increment value duty has been collected otherwise than as an annual duty, if increment value duty has been so collected before the minerals have become comprised in a mining lease or have commenced to be worked; and the annual equivalent of any such capital value of the minerals shall be taken to be two-twenty-fifth parts of that capital value (*i.e.*, the capital value is  $12\frac{1}{2}$  years' purchase of the annual equivalent). The section also contains provision for reduction of the rental value (for increment value duty purposes) where the rental value in parts represents a return for money expended by the lessor within fifteen years in boring, &c.

Any duty payable in respect of excess mineral rights duty is to be assessed by the Commissioners of Inland Revenue on the person liable (*i.e.*, the person receiving the rent), subject to the same appeal as that to which an assessment of duty by the Commissioners under Part I. of the Finance (1909—10) Act, 1910, is subject, and is recoverable as a debt due to His Majesty from that person.

Sub-sect. 3 of sect. 20 of the last-named Act is extended so as to authorize particulars to be required of any lease of minerals or wayleaves or as to the sums paid or payable thereunder, and of such other particulars as to the minerals or wayleaves as the Commissioners may require for the purposes of excess profits duty (*r*). Every proprietor of any minerals and every person to whom any rent is paid in respect of any right to work minerals or of any mineral wayleave shall, upon notice being given to him by the Commissioners requiring him to give particulars as to the amount received by him in respect of the right or wayleave, as the case may be, and where the proprietor is working the minerals, particulars as to the minerals worked, make a return in the form required by the notice, and within the time, not being less than thirty days, specified in the notice, and in default shall be liable to a penalty not exceeding 50*l.*, to be recovered in the High Court (*s*).

(*r*) Principal Act, s. 43 (6).

(*s*) Finance (1909—10) Act, 1910, s. 20 (3).

(2) *Shipping.*

It has been found necessary to make special provision for the case of ships which have changed hands. Owing to the inflated prices obtainable for shipping during the war, had ship-owners been entitled, after buying a ship and paying a heavy price for it, to treat the price as additional capital and to deduct from the profits of the ship for excess duty purposes the statutory percentage upon such additional capital ( $t$ ), it is obvious that a considerable loss of revenue would accrue to the Government. If the pre-war profits standard were a percentage standard, that standard, based upon the pre-war value of the ship, would be much inferior to the amount that could be claimed as a deduction in respect of the statutory percentage calculated upon the purchase price to the new owners, and in this case also a loss of duty to the Government would have resulted. Hence the Finance Act, 1916, enacted ( $u$ ) that where any ship has been sold since the 4th August, 1914, in such circumstances that the profits of the sale are not the profits of a trade or business, the following special provisions shall, if the Commissioners of Inland Revenue so require, be applied in the computation of the liability to excess profits duty in respect of the profit arising from the use of the ship:—

- (a) The pre-war standard of profits of the purchaser as respects the ship shall, where the standard of the trade or business of the vendor is a profits standard, be calculated by reference to the profits arising from the use of the ship during the pre-war trade years, and shall be ascertained in accordance with the provisions of the principal Act, but calculated, where necessary, as if the use of the ship were a separate business; and where that standard is a percentage standard, the pre-war standard of profits as respects the ship shall be the same as if the ship had not been sold; or in the

( $t$ ) See Chapter III., "Computation of Profits."

( $u$ ) 6 & 7 Geo. 5, c. 24 (47).

case of a ship which was used for the first time after the 4th August, 1914, shall be calculated by reference to the capital represented by the ship at the date when it was first used; and the pre-war standard of profits of the trade or business of the vendor and of the purchaser shall respectively be reduced and increased as the case may require with any adjustment which may be necessary to meet the case of borrowed money or unpaid purchase money or other similar matters.

For the purpose of estimating the profits arising from the use of the ship, an apportionment is to be made where necessary of the total profits of the business in which the ship has been used, regard being had to the earnings of the ship as compared with the earnings of the other assets employed in the business (*x*).

These special provisions as to shipping, like so many other parts of the Acts, are intricate and verbose, but the fact is that owing to the shipping difficulties and the prices and freights obtainable for ships, it became necessary to deal specially with excess profits duty from that source. Purchasers of ships no doubt would regard any special provisions preventing them from making the statutory percentage on the capital employed in the purchase of the ship as unfair. If looked at from their point of view alone, no doubt it would seem unfair. But the vendors of ships were probably making large profits upon the cost of them, and if purchasers were to be allowed to make the statutory percentage on the purchase price, no matter how high, the prices obtainable would go higher and higher. The 1916 Act, therefore, in effect said that if a ship had changed hands the profits standard, whether it was a real profits standard or a percentage, must remain the same after as before the purchase, and that if the ship was only one in a number of income-earning items in the vendor's business, then the income of that

(*x*) Finance Act, 1916, s. 47 (b).

business must be apportioned to show the profits attributable to the ship.

The vendor of any ship may be required by the Commissioners of Inland Revenue to give any such information to them, and the purchaser, as the Commissioners think necessary in order to enable the provisions as to excess profits duty in the case of sale of a ship to be carried into effect (*y*).

The purchaser is not to obtain any greater relief under the principal Act, s. 40 (3) (which enables the Commissioners to modify the provisions of the Fourth Schedule in certain cases), or under Schedule IV., Part I. (3) (deductions for wear and tear as allowed under the Income Tax Acts), than could have been obtained by the vendor if the ship had not been sold, other than relief in connection with the expenditure by the purchaser in improvements or repairs (*z*).

In the application of the principal Act, s. 41 (adjustments for increased or decreased capital), to any trade or business whose pre-war standard of profits has been determined or adjusted under the foregoing provisions, any increase or decrease of capital attributable to the purchase or sale of the ship is to be disregarded; and where any such determination or adjustment has taken place both in respect of the sale of a ship and the purchase of another ship for the same trade or business, Schedule IV., Part II. (6) (which provides for adjustments of capital on sale and purchase of assets where the business consists of management of particular assets), is not to apply.

In computing the excess profits duty of any trade or business which consists wholly or partly of the business of shipping, the provisions of the principal Act, s. 38 (3) (which relate to the repayment or setting off of duty on account of deficiencies or losses), are not to apply in relation to any deficiency or loss in any accounting period commencing on or after 1st January, 1917, and in the case of an accounting period which has commenced before that date but ends after that date, are not to

(*y*) Finance Act, 1916, s. 47 (c).

(*z*) Ibid. s. 47 (d).

apply in relation to so much of the deficiency or loss as may be apportioned to the part commencing on that date (*a*). Provided that—

- (a) Where the shipping business is carried on merely as ancillary to the principal trade or business the above provisions do not apply.
- (b) Where the trade or business carried on does not consist wholly of shipping, and the part which does not consist of shipping is not merely ancillary to the business of shipping, such apportionment of any deficiency or loss is to be made by the Commissioners as may be necessary to limit the application of the above provisions to such part of the business as consists of shipping; and
- (c) If in any such accounting period as aforesaid there has been a loss, or the profits have not reached the point which would have involved liability to excess profits duty if the percentage standard had been adopted, the same amount, as regards the deficiency or loss or so much thereof as is affected by the above provisions, is to be repaid or set off under sect. 38 (3) of the principal Act as would have been repaid or set off if the percentage standard had been adopted (*b*).

The effect of the above provisions in the 1917 Act is that shipping businesses as from the 1st January, 1917, are not to be entitled to the ordinary provisions relating to repayment or set-off in respect of losses, or diminutions in profits below the pre-war standard. After the date named they are to be treated for the purpose of repayment and set-off as if their profit standard were the statutory percentage standard. If their profit falls below the statutory percentage standard they can claim repayment or set-off to make any diminished profits up to the statutory percentage, but nothing more. But these provisions do not apply where the shipping business is

(*a*) Finance Act, 1917, s. 22.

(*b*) Ibid. s. 22 (1).

merely ancillary to some other business; and where the business consists of other things besides shipping, and the part which is not shipping is not merely ancillary to the business of shipping, then there is to be an apportionment of any deficiency or loss so that these special provisions as to shipping shall not prejudice the trader as to his other business.

Any appeal under the principal Act, s. 45 (5) (*i.e.*, as to assessment), on any question under the above provisions of the 1917 Act is to the Special Commissioners (*c*).

In the provisions of the 1917 Act the expression "business of shipping" means the business carried on by an owner of ships, and for the purpose of this definition the expression "owner" includes any charterer to whom a ship is demised (*d*).

(*c*) *I.e.*, commissioners for the special purposes of the Acts relating to income tax.

(*d*) Finance Act, 1917, s. 22 (3).

## CHAPTER VI.

REPAYMENT AND SET-OFF—CHANGE OF OWNERSHIP—  
SUBSTITUTION OF ASSETS.(1) *Repayment and set-off.*

WHERE a person proves that in any accounting period which ended after the 4th August, 1914, his profits have not reached the point which involves liability to excess profits duty, or that he has sustained a loss, he is entitled to repayment of such amount paid by him as excess profits duty in respect of any previous accounting period, or to set off against any excess profits duty payable by him in respect of any succeeding accounting period, such an amount as will make the total amount of excess profits duty paid by him during the whole period accord with his profits or losses during that period (*a*).

This provision is what is known as an average clause, and enables the trader to maintain his yearly average of profits. It enables him to maintain not merely his actual pre-war average of profits, but that average plus the allowances which under the principal Act he is permitted to add. In the first place he may add to his actual average profits of the selected years the sum of 200*l.* (*b*). If his pre-war standard is taken to be the percentage standard (*c*) he may also add this 200*l.* (*d*). If he has increased his capital for the accounting period he is entitled to deduct from his profits in that period the statutory percentage on the addition to his capital (*e*). The statutory

(*a*) Principal Act, s. 38 (3).

(*b*) Ibid. s. 38 (1).

(*c*) See Chapter II.

(*d*) Principal Act, s. 40 (2), and ibid. s. 38 (1).

(*e*) Ibid. s. 41 (1).

percentage for increased capital in the case of a business owned by a company or other body corporate is 9 per cent., and in the case of any other business 11 per cent. (*f*), and in the case of some businesses the statutory percentage has been increased on application to the Commissioners of Inland Revenue (*g*).

If the trader has reduced his capital for the accounting period, he has to add to his profits in the accounting period the statutory percentage on the amount by which his capital is reduced before he can claim any repayment or set-off (*h*). But for this purpose the statutory percentage remains as fixed by the principal Act, viz., 6 per cent. in the case of a business owned by a company or other body corporate, and 7 per cent. in the case of other businesses (*f*).

Again, where the pre-war standard of profits is the percentage standard, or the capital account shows a debit balance, and the net result of the business during the three last pre-war trade years has been a loss, and any part of the profits has been applied in extinction of the loss or debit balance, a deduction is allowed equal to the amount of profits so applied (*i*).

The provision does not apply so as to enable the owner of a business to claim repayment or set-off in respect of losses or deficiencies incurred before he became owner. Thus in *Commissioners of Inland Revenue v. Gittus* (*j*), where a son employed in the business at a salary to the date of his father's death on the 6th September, 1915, continued after that date to carry on the business on his own account, he was entitled to set off, against subsequent profits, the proportion of the year's deficiency attributable to the period between the 6th September and the 1st October, 1915, but not the proportion attributable to the period from the 1st October, 1914, to the 6th September, 1915.

(*f*) Principal Act, s. 40 (2); Finance Act, 1917, s. 26 (1) and (2).

(*g*) Principal Act, s. 40, and Chapter II.

(*h*) *Ibid.* s. 41 (2).

(*i*) Principal Act, 4th Sched., Part I. (7), and Finance Act, 1916, s. 50.

(*j*) L. T. J., 28th June, 1919, p. 153.

By the principal Act the excess profits duty was fixed at 50 per cent., and this was increased by the Finance Act, 1916, to 60 per cent. for any accounting period beginning after the expiration of a year from the commencement of the first accounting period. The latter Act provided (*k*), that any amount to be repaid or set off on account of a deficiency or loss arising in any period in respect of which the duty would be payable at the rate of 50 per cent. of the excess should be calculated by reference to that rate of duty. The effect seems to be that if in the earlier accounting period a loss or deficiency of profits was experienced, and if in the later accounting period excess profits were realized, then for the purpose of excess profits duty the duty was to be at 60 per cent., but for repayment or set-off in respect of the first year, only 50 per cent. of the later period's excess profits could be taken.

The duty was increased to 80 per cent. of the excess profits by the Finance Act, 1917, which also provided (*l*) that any amount to be repaid or set off on account of any deficiency of profits or loss experienced after the 1st January, 1917, should be calculated by reference to duty at 80 per cent. This provision seems to have had the contrary effect to the corresponding provision in the 1916 Act, because, apparently, if after the 1st January, 1917, a loss or deficiency of profits were experienced, but excess profits duty had been paid in respect of previous accounting periods, then the duty to be repaid was to be calculated by reference to duty at 80 per cent., although actually it might only have been paid at 50 per cent. or 60 per cent.

The Finance Act, 1919, has sent the pendulum back again, and provides that in respect of any loss or deficiency of profits arising on or after the 1st January, 1919, any repayment or set-off is to be calculated by reference to duty at the rate of 40 per cent. So that apparently, although duty in and before 1918 was paid at 80 per cent., repayment in respect of any loss or deficiency of profits after 1918 can only be claimed up

(*k*) Sect. 45 (2).

(*l*) Sect. 20 (2).

to such an amount as would have represented 40 per cent. of the excess profits made in previous years.

Special provisions are made for computing the duty payable by a society registered under the Industrial and Provident Societies Acts in respect of excess profits (*m*) if the society so require, but these special provisions do not apply for the purpose of ascertaining the amount of any deficiency of profits or loss for the purpose of repayment or set-off, and any duty computed under such special provisions is not to be repaid or remitted by reason of a deficiency or loss in any other accounting period computed according to the ordinary provisions of the Act.

As to repayment or set-off in relation to shipping, see Chapter V.

(2) *Change of ownership (n).*

There is provision for the case of a business having changed ownership since the commencement of the last three pre-war trade years (*o*). In this case the provisions of the Fourth Schedule, Part II., for ascertaining the pre-war standard of profits apply as if a new trade or business had been commenced on the change of ownership, except in cases where the taxpayer makes an application that the provisions of the Act should apply as if the trade or business had not changed ownership, but in that case such modifications (if any) are to be made in the application of the Schedule as may be necessary to make the basis on which the profits standard is computed the same as that on which the profits of the accounting period are computed.

It seems clear that the above provision refers to businesses which have changed hands during the war, as such cases would be covered by the exact wording of the provision "since the commencement of the last three pre-war trade years." The result is that the purchaser of a business has the right to the

(*m*) Finance Act, 1917, s. 26 (8).

(*n*) For pre-war standard in case of new businesses, see Chapter II.

(*o*) Principal Act, 4th Sched., Part II. (5).

pre-war standard of profits, on his making application that the provisions of Part III. of the Act and Schedule should apply as if the business had not changed ownership, but subject to modifications to make the basis of the profits standard the same as the basis of the profits of the accounting period. Thus if the pre-war standard were the statutory percentage basis, the computation of profits in the accounting period for the purpose of estimating liability to the duty would have to be on a percentage basis. Adjustments might have to be made in other respects, however. Suppose the case of an owner whose capital stood in his books at 5,000*l.*. Had he remained the owner adjustments of profits would have had to be made for any increase or reduction of capital over or below that amount (*p*). But the owner may well have sold his business for 7,500*l.*, though the latter figure, having all been paid into the pockets of the previous owner, does not really represent more assets in the business itself. It is submitted that if the purchaser wished to obtain the benefit of the old pre-war profits standard, and made application for the provisions of Part III. of the Act to apply as if the business had not changed hands, he would have to do so upon the basis that the business only had employed in it the pre-war capital, plus any additions he paid into and employed in the business itself, as distinguished from what he may have paid to the vendor. Adjustments may also have to be made as to other matters.

The above provision does not make sect. 38 (3) (repayment and set-off) applicable as if no change of ownership had taken place (*qq*).

Special provisions have been made for the case of sale of ships (*q*), the short effect of which is that where the standard of the business of the vendor is a profits standard the pre-war standard of the purchaser of the ship shall be calculated by reference to the profits arising from the sale of the ship during

(*p*) See principal Act, s. 41 (1) and (2), and Chapter III.

(*qq*) *Commissioners of Inland Revenue v. Gittus, supra.*

(*q*) See Finance Act, 1916, s. 47, and Chapter V.

the pre-war trade years; and where the vendor's standard is a percentage standard, the pre-war standard of profits as respects the ship shall be the same as if the ship had not been sold, or in the case of a ship used for the first time after 4th August, 1914, shall be calculated by reference to the capital represented by the ship at the date when it was first used.

As the duty may be assessed on any person for the time being owning or carrying on the trade or business (*r*), it would seem that on a sale and purchase of a business, the purchaser may find himself in the happy position of having to pay excess profits duty in respect of profits made prior to the date on which he took over (*s*). On a change of ownership, however, the Commissioners may, if they think fit, take the accounting period as the period ending on the date of change of ownership and assess the duty on the person who owned or carried on the business on that date (*ss*).

### (3) *Substitution of assets.*

Where a trade or business is confined to the management of any particular assets, but power exists to substitute other assets for those particular assets or any of them, such a substitution is not to be deemed to constitute a change of ownership of the business; but where any such substitution has been carried out by the sale of assets and the purchase of other assets, the capital of the trade or business shall be taken to be increased or decreased, as the case may be, only by the amount of the difference between the price of the assets purchased and the price obtained for the assets sold, and the capital representing the assets purchased is to be estimated on the same basis for all excess profits duty purposes (*t*).

It is believed that this provision will have application in very few cases. Very few businesses consist only of the management

(*r*) Principal Act, s. 45 (2).

(*s*) See Mr. Justice Rowlatt's remarks in *Robins v. Commissioners of Inland Revenue*, reported *Times* Newspaper, 24th June, 1919.

(*ss*) Principal Act, s. 45 (2).

(*t*) Principal Act, 4th Sched., Part II. (6).

of particular assets with power to substitute other assets for them. This kind of business does exist in shipping circles, and it may exist in a few other cases, *e.g.*, agricultural tractors, &c. And the articles of many limited liability companies no doubt contain power to sell assets, and, independently of such power of sale, contain power to acquire other property. A theatre-owning company will in the first instance probably be formed to own and work a certain theatre. Its memorandum will also contain power to acquire and carry on other theatres, and will also contain power to sell. In such a case the sale of one theatre and the purchase of another could hardly have been said to be a change of ownership of business so far as regarded the limited company, apart altogether from the above provision. But the above provision seems to cover such a case.

The provision does not apply to a case where a ship has been sold and another ship purchased in its place, and the pre-war standard of profits has been determined or adjusted under the Finance Act, 1916, s. 47, both in respect of the sale of the ship and the purchase of the one substituted (*u*).

(*u*) See Finance Act, 1916, s. 47 (e).

## CHAPTER VII.

## WEAR AND TEAR AND DEPRECIATION AND OBSOLESCENCE.

IN arriving at profits for excess profits duty purposes deductions for wear and tear or for any expenditure of a capital nature for renewals are not to be allowed except such as might be allowed under the Income Tax Acts, and if allowed are only to be of such an amount as appears to the Commissioners of Inland Revenue to be reasonably and properly attributable to the year or accounting period (*a*). The Commissioners have power, however, to allow such modifications of the Fourth Schedule to the principal Act (which includes the above provision) as they think necessary in order to meet the particular case, on the ground of—

- (a) a change in the constitution of a partnership; or
- (b) the postponement or suspension, as a consequence of the war, of renewals or repairs; or
- (c) of exceptional depreciation or obsolescence of assets employed in the trade or business due to the war; or
- (d) to the necessity in connection with the war of providing plant which will not be wanted for the trade or business after the war; or
- (e) any other special circumstances specified in regulations made by the Treasury.

If the Commissioners refuse to allow any such modification or the taxpayer is dissatisfied with the modification allowed, the taxpayer may require the Commissioners to refer the case to a Board of Referees appointed by the Treasury, and that board are to consider any case so referred and have the same powers with respect thereto as the Commissioners have (*b*).

(*a*) Principal Act, 4th Sched., Part I. (4).

(*b*) Principal Act, s. 40 (3).

In the case of controlled establishments (see Chapter XI.), where the reference relates to an accounting period during any part of which the establishment has been controlled, and to the postponement or suspension of renewals or repairs, or to exceptional depreciation or obsolescence of assets, or to the necessity in connection with the war of providing plant, the reference is to a Referee or Board of Referees appointed or designated by the Ministry of Munitions (*c*).

As regards shipping, nothing in the above provisions is to enable the purchaser of a ship to obtain any greater relief than could have been obtained by the vendor if the ship had not been sold other than relief in connection with expenditure by the purchaser in improvements or repairs (*d*). This qualification appears to have been introduced as a result of the high prices paid for second-hand ships. A ship written down to, say, 30,000*l.* in the hands of the pre-war owners, might be sold for three or four times that sum, and if the depreciation were calculated on the purchase price it would obviously amount in each year to three or four times the previous yearly depreciation. It seems difficult to understand why, looked at from the purchaser's point of view, this should not be allowed, but no doubt the answer would be that the transfer of ownership would not increase the profit-earning power of the ship, and if depreciation were allowed at the same rate on the purchase price there would be a considerable reduction in the excess profits duty paid in respect of the ship.

Special provision has been made for patent rights. The Commissioners have power in any case to allow modifications of the provisions of the Fourth Schedule owing to depreciation through effluxion of time on any capital which is employed in the business, and which is expended upon and consists of patent rights so far as such depreciation is not offset by goodwill arising from the user of or interest in such rights (*e*).

(*c*) Finance Act, 1916, s. 55.

(*d*) Ibid. s. 47 (*d*).

(*e*) Statutory Rules and Orders, 1917, No. 399. Regulation dated April 26th, 1917, made by Treasury under sect. 40 (3) of the principal Act.

The meaning of this regulation is not clear. In the case of a firm or company which has acquired a patent by purchase it is obvious that the purchase money is employed in the trade or business, and is expended upon and consists of patent rights. The patent rights are running, and consequently, as they hold good for fourteen years only, are depreciating. If the invention covered by the patent is being manufactured and sold without hindrance owing to war conditions (a state of things most unlikely to happen in the case of the majority of patents), then it may be reasonably said that the goodwill obtained by the continued manufacture and sale offsets the depreciation, and consequently no allowance would be made for depreciation.

Suppose, however, that the manufacture of the invention had to be abandoned, or was materially hampered owing to war conditions, though in other departments, say from war contracts, the owner was making excess profits. In this case the depreciation is obviously not offset by goodwill. The Commissioners, however, it is believed, argue that if the owner did not depreciate the patents in his capital account before the war, he ought not to be allowed to do so for the purpose of excess profits duty, because then the pre-war profits standard and the profits in the accounting period would be calculated on different bases. They also contend that if a manufacturer, and particularly one who holds war contracts, makes excess profits, he is receiving thereby compensation for the non-user of his patents. It is submitted that these contentions are wrong, and in many cases render the regulation nugatory, and that on the plain meaning of the regulation the question whether a manufacturer did or did not write down the value of his patents is beside the point, as also is the question whether on other manufactures he is making excess profits. His patents are expiring, and he is getting together no equivalent amount of goodwill.

A more difficult question, perhaps, arises where a manufacturer works his own patent. Usually in this case he has not set down any figure in his capital account as the value of the

patent except the cost of procuring it, which is trivial. In such a case he obviously did not write down the value of the patent before the war. Moreover, in such a case, does the patent represent "capital which is employed in the trade or business, and which is expended upon and consists of patent rights"? Whether the owner has made a book entry as to the value or not, the patent (assuming it to be in respect of an article for which there is a sale) represents a capital value for which the owner would be paid if he sold his business and patent rights. Though it is his own invention, and he has not paid money for it, it represents part of his capital, which is depreciating, and it is submitted that that value ought to be depreciated, even though it does not represent money out of pocket paid to a third party for the invention; but it is doubtful whether such a case would be held to be within the benefit of the regulation.

As to wear and tear generally, it will be observed that by the Fourth Schedule, Part I., deductions were not to be allowed except such as might be allowed under the Income Tax Acts. The deductions allowed under the Income Tax Acts have long been a source of discontent to manufacturers, and in fact would only represent a return of capital spread over a long period of years. Consequently considerable anxiety was felt as to whether the deductions would be fair to traders. This was of special importance, because many manufacturers were running their machinery day and night. Further, they were running with unskilled men and women who were neglectful of their machines; no sufficient opportunities existed for keeping the machinery in good condition; and, moreover, new and second-hand machinery had to be bought at greatly inflated prices—machinery which would be of little or no use, in many cases, to the manufacturer under peace conditions. Therefore in 1917 an attempt was made to get clause 3 of Part I. of the Fourth Schedule repealed, and a wider one substituted for it, but the Government were of opinion that full provision was already made, and the attempt was abandoned upon the Government agreeing to issue a memorandum on the subject in terms pre-

sented to Parliament. The memorandum was accordingly issued as follows:—

*August, 1917.*

MEMORANDUM.

1. *Basis of profits for excess profits duty purposes.]*—Excess profits duty is chargeable, generally speaking, by reference to profits which are computed on income tax principles; but the temporary character of the duty and its relation to the existing war conditions have rendered necessary special allowances for depreciation in the value of assets, additional to the allowances granted for income tax purposes. It is the purpose of this memorandum to explain shortly the nature and extent of these various provisions in the case of excess profits duty, and more particularly their practical application to the profits of a manufacturing business.\*

2. *Statutory allowances.]*—So far as income tax is concerned, it is well known that allowances are restricted to the diminution in value due to wear and tear of plant and machinery (section 12 of Customs and Inland Revenue Act, 1878). For excess profits duty purposes, on the other hand, further allowances are admissible; section 40 (3) of the Finance (No. 2) Act, 1915, provides for special relief being granted in respect of—

- (a) postponement or suspension, as a consequence of the present war, of renewals or repairs;
- (b) exceptional depreciation or obsolescence of assets employed in the business due to the present war; and
- (c) the necessity in connection with the war of providing plant which will not be wanted for the purposes of the trade or business after the termination of the war.

3. *The measure of special depreciation and obsolescence allowances.]*—These allowances extend to any material assets employed in a business and not merely to machinery and plant. Where these assets have been constructed or acquired during the war at an inflated price and will sink to a lower level of value, or even

\* A Special Memorandum relating to depreciation in the value of ships which have been built during the war has been previously prepared, and may be obtained from the Ministry of Shipping, St. James's Park, London, S.W. 1.

to scrap value, at the end of the war, full relief can be claimed. The measure of the allowance to be made in respect to such assets will be the difference between cost and post-war value. An allowance of the like nature is, of course, applicable also to assets in use before the war, the value of which has fallen owing to war causes. The measure of the allowances in such cases is the difference between the value of the assets (depreciated or written down for wear and tear) at the date when liability to excess profits duty began and their post-war value.

4. *Determination of special depreciation allowances.]*—Inasmuch as post-war value and the duration of the war are unknown, the Board of Inland Revenue have been unable in most cases to make final allowances of the foregoing character, but where the necessary evidence is furnished that depreciation is taking place or is inevitable at the end of the war, they are ready to make provisional allowances subject to subsequent correction.

5. *Period over which special depreciation allowances fall to be granted.]*—As a general rule these allowances, whether provisional or final, will be “spread,” i.e., granted by instalments in successive accounting periods during the lifetime of the duty; but in exceptional cases where new assets are being regularly acquired during successive accounting periods, and the taxpayer desires that the allowance (whether provisional or final) for each asset or group of assets should be wholly or mainly granted in the accounting period in which the asset is acquired, the Board will not object to that course being taken.

6. *“Controlled” firms.]*—Where in the case of businesses which are “controlled” under the Munitions of War Act, 1915, allowances of the foregoing character for depreciation or obsolescence have been determined by the Minister of Munitions for purposes of the munitions levy, the amounts so ascertained have been adopted by the Board of Inland Revenue for excess profits duty purposes. The repeal of the munitions levy as at 31st December, 1916, and the transfer to the Board of Inland Revenue of the duty of assessing and collecting the levy (up to that date)—recently enacted by the Finance Act, 1917—involve an alteration of existing arrangements to the extent that depreciation allowances not already ascertained by the Ministry of Munitions will fall to be determined by the Board of Inland Revenue, who have made

arrangements to secure continuity of practice in the methods of granting the allowance.

7. *Appeals as to special depreciation allowances.]*—Where a taxpayer is dissatisfied with the allowances granted by the Board of Inland Revenue in respect of special depreciation or obsolescence of assets, he may require his case to be referred to the Board of Referees appointed under Part III of the Finance (No. 2) Act, 1915, or—in the case of a “controlled” firm—to the Board of Referees appointed under the Munitions of War Act, 1915.

8. *Wear and tear allowance.]*—For excess profits duty, the allowance for wear and tear of plant and machinery will usually be similar to the allowance granted under the Income Tax Acts. Its amount is to be that reasonably and properly attributable to the accounting period (Finance (No. 2) Act, 1915, Fourth Schedule, Part I, Rule 3). The income tax allowance for wear and tear (which is fixed by the Income Tax Commissioners) is not limited by statute to any specific amount or rate, the only provision being that it shall represent the diminished value of the plant and machinery by reason of wear and tear during the year. Where for any special reason it is claimed that the allowance for wear and tear of machinery and plant should, for excess profits duty, exceed that allowed for income tax, application should be made in the first instance to the Surveyor of Taxes dealing with the excess profits duty assessment. An appeal on the question may be made either to the District Commissioners of Taxes or to the Special Commissioners.

9. *Wear and tear allowance immaterial in certain circumstances.]*—Generally speaking, the ordinary allowance for wear and tear in the case of excess profits duty is of comparatively small importance in so far as it relates to plant and machinery which may be the subject of an allowance for special depreciation owing to the war as explained above. In such cases the difference between war value and post-war value necessarily includes the ordinary allowance for wear and tear.

10. *Deferred renewals and repairs.]*—As regards the allowance authorised for the postponement or suspension, as a consequence of the war, of renewals or repairs, the amount admissible is usually capable of estimation and agreement when an excess profits duty assessment is made. The taxpayer has the right of appeal to the

Board of Referees appointed under Part III of the Finance (No. 2) Act, 1915, or—in the case of a “controlled” firm—to the Board of Referees appointed under the Munitions of War Act, 1915.

11. *Special points.*]—Reference may also be made to the following points on which questions sometimes arise:—

- (a) *Obsolete machinery.*]—Where pre-war machinery or plant has become obsolete from causes not actually relating to the war but arising during the war, and is then replaced, an allowance for the difference between the written-down value and the scrap value is admissible, and where the replacement is not effected during the war, but shortly after, a like allowance may be claimed under section 40 (3) of the Finance (No. 2) Act, 1915.
- (b) *Depreciation of pre-war buildings.*]—Special depreciation of pre-war buildings due to the war may be allowed for under the same sub-section. Normal depreciation taking place equally in the past and in the present, if allowed, would not, in most cases, affect the liability to excess profits duty.
- (c) *Special purchases of machines, &c.*]—It will happen from time to time that a manufacturer will purchase machines, &c., for the purpose of specific contracts, and will wish, from motives of prudence, to write down the value of the machines to a low figure out of the profits of the contracts. In cases in which purchases of this character have regularly occurred, both in the past and in the present, the non-allowance of a special depreciation beyond the ordinary wear and tear allowance would not normally affect the liability to excess profits duty. Where, on the other hand, purchases of this kind take place only during war periods, they would usually be attributable to war conditions, in which event a special allowance can be claimed under section 40 (3) of the Finance (No. 2) Act, 1915.

The above memorandum is pretty clear, and needs little remark.

Paras. 2 and 3 of the above memorandum contemplate fair allowances in respect of the matters mentioned in para. 2 (a), (b) and (c). They are needed in order that the trader, in

addition to paying large sums of excess profits duty, shall not also find himself landed with much depreciated plant, machinery, and assets generally. For it will be observed that the allowances are not restricted to plant and machinery. They include depreciation of buildings, or any other material asset. For example, during the night and day work during the war, in the effort to increase output of all kinds of war material, floors have been cut up badly, walls damaged, and roads and yards injured. All these matters will be allowed for, and if not put right owing to lack of labour, &c., a proper allowance should be claimed in respect of them.

During the assessment and collection of the duty, the practice has been to allow a considerable deduction from profits each year to meet exceptional depreciation and obsolescence, particularly of machinery and plant bought for war work, upon the understanding that after the war the figures to be finally allowed would be adjusted, so that the trader should be allowed the difference between the cost to him of the asset in question and its post-war value. At the end of the accounting period ending next after the termination of the war, all these matters should be carefully considered and proper claims made in the accounts for adjustment. In fact many firms have already, no doubt, disposed of their plant, &c., got purely for war work, with a view to claiming the difference between the purchase price to them and the sale price by them. Where the asset cannot be disposed of, no doubt the Inland Revenue authorities will accept the valuation of a competent valuer as to its post-war value.

It will be seen that the taxpayer has a right of appeal from the decision of the Commissioners of Inland Revenue on the above matters to a board of referees, and on any appeal to such board of referees they may be required to state a case for the opinion of the High Court on a point of law. If the establishment is a controlled one, however, the appeal from the Commissioners is to a board of referees appointed under the Munitions of War Act, 1915. (See this Act and Rules made thereunder in Appendix.)

The memorandum above distinguishes between wear and tear and exceptional depreciation, &c., stating that the amount of the allowance for wear and tear for excess profits duty purposes will usually be the same as for income tax purposes. This will, no doubt, be the case where the hours worked have been the same during the war as before the war. If, however, the hours have been longer during the war, as has been the case in practically all the manufacturing industries, obviously a proportionately greater amount should be allowed for wear and tear; and, in fact, in the manufacturing industries probably the vast majority of the owners take up the position that wear and tear allowances are wholly inadequate, and that they must have the exceptional depreciation allowances.

## CHAPTER VIII.

## VALUATION OF STOCKS.

As the market value of all commodities increased to an unprecedented extent during the war, manufacturers became very uneasy about the position as to their stocks. Stocks held at the outbreak of war would gradually be sold off in most cases, and the difference between the amounts at which they stood in the books and the selling prices would appear in the accounts as profits. During an ordinary period of rising prices any such profits would go into the pockets of the owner, and when the market began to fall he would be able to turn to the accumulated profits to meet any loss on the sale of stock owing to the fall. But since the outbreak of war the Government has been taking a very large percentage of the profits from this source as well as of the profits generally, with the result that manufacturers and proprietors of businesses generally have not this reserve of profits previously made to tide them over the period of inevitable fall in prices. So that apart from some special provision to meet the case the manufacturer would be left at the period when the liability to the duty ceased with stocks at very heavily inflated prices, which would in due course have to be sold at a serious loss.

The Association of Controlled Owners made certain proposals to the Inland Revenue Department as to the basis to be adopted in the valuation of stocks on hand, and the opinion of a number of chartered accountants was taken (*a*). The matter was raised in the House of Commons in 1917, and the Government agreed

(*a*) See statement respecting proposals as to valuation of stocks presented to the House of Commons in 1917.

to issue a memorandum on the subject, which they issued accordingly as follows:—

*August, 1917.*

MEMORANDUM.

*Valuation. General principle.]*—The Board of Inland Revenue are prepared to adopt the following modifications of the general principle that stocks should be valued at cost price or market value, whichever is the lower.

1. *Final valuation. General concession for excess profits duty.]*—A period of two years will be allowed after the termination of the war in which to ascertain by actual realisation the value of the stock appearing in the account at the end of the last accounting period, and an allowance made from the profits of that period for any difference between the valuation and the sum realised.

The loss (if any) on only such stocks as were in hand at the end of the last accounting period will be brought into the adjustment, but the whole of such stocks, not individual parcels selected by the taxpayer, must be considered.

The necessary sanction for this modification of general principles will be given by a Regulation under section 40, sub-section 3, of the Finance (No. 2) Act, 1915 (*aa*).

2. *Treatment of "base stocks."*—Certain classes of industry require to keep stocks of raw or semi-manufactured goods for the purposes of manufacturing processes, and these goods are frequently of such an imperishable character that a minimum quantity required for a business could be held untouched for a long period.

Accordingly any class of trade—

- (a) which requires for its manufacturing processes to keep such stocks, and
  - (b) in which a recognised practice has obtained of valuing a constant quantity at a fixed price,
- the Board of Inland Revenue are prepared to recognise the practice.

The Board of Inland Revenue would regard goods as imperishable which are of sufficient durability to last without material deterioration during a period equal to the length of the war.

Any individual member of the class who has not adopted the

(*aa*) No regulation has yet been issued.

method in his business may be allowed to do so for the purposes of excess profits duty, but may not claim as the constant quantity of stock so valued a greater quantity than the minimum amount held at any stocktaking in the three pre-war trade years.

Where a claim is made that an industry should be brought within this concession, the Board of Inland Revenue are prepared to receive representations and to consider evidence as to the existence of a material body of such practice in the industry and as to the character of the stocks to which it is claimed the method should be applied, with a view to securing the uniform treatment of all members of the industry.

The balance of stock above the minimum quantity in cases falling under this modification of the general principle is to be treated as in (1).

3. *Replacement of minimum quantities in certain circumstances.*]—Profits derived from sales which reduce stock below the particular minimum or constant quantity adopted for any business are not the less trading profits. Where, however, a raw material is associated with plant in a manufacturing process (e.g., metal kept to a constant level in galvanising baths), the Board of Inland Revenue will consider a claim under section 40 (3) of the Finance (No. 2) Act, 1915, that it is akin to a capital asset, like plant which has been exceptionally depreciated (by depletion) or of which the renewal has been postponed.

4. *Hidden stock reserves generally.*]—Where in an industry or as respects a class of stock to which the foregoing (2) does not apply, the owner of a business has taken a quantity of stock at a base price, the stock will fall to be valued during the periods of liability at cost or market value, whichever is the lower; but from the final valuation (on that basis) there will be allowed a deduction of a sum (in pounds sterling) equal to the original difference (at the end of the standard period) between the valuation on the base method and a valuation on the cost or market value method. Alternatively, the first stock valuation may be revised and put upon the general basis of cost or market value, when the modification outlined in (1) will apply.

The effect of paragraph 1 of the memorandum, shortly, is that though the stocks therein mentioned must be valued in the accounts at cost price or market value, whichever is lower, the

owner will have two years from the termination of the war in which to sell the same, and if on the whole of his stock he realizes less than the amount at which it was valued, the difference will be allowed from the profits of the last accounting period. If the stock is not sold for some time after the termination of the war the excess profits duty may have been paid, but in that case no doubt the Commissioners would repay the difference.

His Majesty in Council may declare what date is to be treated as the date of the termination of the present war (*b*).

Paragraph 2 of the memorandum relates to "base stocks," such as copper, pig iron, lead, spelter, &c. The provision recognizes for the purpose of excess profits duty a practice which has existed for a long time with some firms engaged in those industries. Some firms, however, though in the industry, had not adopted the practice of keeping "base stocks." The latter part of the paragraph allows them to adopt the practice for the purpose of valuation of stocks.

Paragraph 4 enables manufacturers and others who, though not engaged in a trade to which the "base stock" practice applies, have taken a quantity of any stock at a "base stock" price in pre-war years, to obtain similar benefits to those accorded to "base stock" industries.

The question of trading stocks and the financial risks attaching to holding the same was again gone into by a committee appointed by the Minister of Reconstruction after consultation with the Chancellor of the Exchequer and the President of the Board of Trade, and a report made, dated the 5th December, 1918, which went thoroughly into the risks and made certain suggestions for meeting them (*c*). Its principal suggestion was a reduction of the rate of duty, and the Finance Act, 1919, provides for a reduction to 40 per cent.

(*b*) Termination of the Present War (Definition) Act, 1918.

(*c*) See Ministry of Reconstruction, Committee on financial risks attaching to the holding of trading stocks.

## CHAPTER IX.

## ASSESSMENT, PAYMENT, AND APPEALS.

THE Commissioners of Inland Revenue may (*a*), for the purposes of excess profits duty, require any person (*b*), engaged (*i.e.*, as owner or principal or agent for the owner or principal (*c*)) in any trade or business to which the Act applies or who was so engaged during any accounting period or pre-war trade year, to furnish them within two months (after the requirement for the return is made) with returns of the profits of the trade or business during the accounting period or pre-war trade years, and such other particulars in connection with the trade or business as the Commissioners may require.

In *Smeeton v. Att.-Gen.* (*cc*) the Board of Inland Revenue served notice on the plaintiff to make a return, and alleged that he was liable to excess profits duty, which the plaintiff denied upon the ground that he was within the exemptions in sect. 39 of the principal Act. The plaintiff commenced an action for a declaration (1) that he was under no obligation to make the return; (2) that he was not liable to the duty; and (3) that he was under no obligation to supply the information. The Court (Peterson J.) refused to make any declaration on the ground that he could appeal against any assessment or resist any claim for penalties.

It is the duty of every person chargeable to the duty to give notice of his liability to be charged in respect of any accounting period to the Commissioners of Inland Revenue, before the expiration of two months after the termination of any accounting period in respect of which he is chargeable (*d*).

(*a*) Principal Act, s. 44 (1).

(*b*) This term includes corporations. See Interpretation Act, 1889.

(*c*) See sect. 45 (2).

(*cc*) *Times* Newspaper, 29th July, 1919.

(*d*) Principal Act, s. 44 (2); Finance Act, 1916, s. 45 (3); Finance Act, 1917, s. 20 (3); Finance Act, 1918, s. 34; Finance Act, 1919, ss. 32, 36.

It is also the duty of the liquidator of every company being wound up, and which is chargeable to the duty, to give notice of the fact to the Commissioners (*e*).

Any person who fails to furnish a proper return as above, or to comply with the requirements of the Commissioners under the above provisions, or to give any notice required by the above provisions, is liable on summary conviction to a fine not exceeding 100*l.*, and to a further fine not exceeding 10*l.* a day for every day during which the offence continues after conviction therefor (*f*).

It is forbidden to enter into any fictitious or artificial transaction, or to carry out any fictitious or artificial operation, for the purpose of avoiding payment of the duty, and if any such transaction or operation was entered into or carried out before the commencement of the principal Act, the person concerned is to inform the Commissioners of the nature of the transaction or operation. Contravention of or failure to comply with this provision entails a liability on summary conviction to a fine not exceeding 100*l.* (*g*).

Sect. 45 4 of the principal Act contained provisions requiring the liquidator of a company wound up before the 1st July, 1916, to give notice of any liability to the duty, and to set aside a sum satisfactory to the Commissioners of Inland Revenue to meet the duty. But there is no express requirement in the later Acts as to the setting aside of sums to meet the duty. If, however, the company is liable to the duty, the liquidator would have notice of the debt due to the Government, and obviously could not distribute the assets without satisfying it.

The Commissioners of Inland Revenue have power to require the vendor of any ship to give such information to them and to the purchaser as the Commissioners think necessary in order to enable the provisions of the Finance Act, 1916, s. 47, as to

(*e*) Principal Act, s. 44 (2).

(*f*) Ibid.; Finance Act, 1916, s. 45 (3); Finance Act, 1917, s. 20 (3); Finance Act, 1918, s. 34; Finance Act, 1919, ss. 32, 36.

(*g*) Principal Act, s. 44 (3).

the calculation of the duty in the case of shipping to be carried into effect (*h*).

If any person required by law to make a return fails to do so, or if the return made by him appears to the Commissioners to be incorrect or insufficient, the Commissioners may, without prejudice to the enforcement of any penalty, make an assessment of the duty according to the best of their judgment (*i*).

The duty is assessed by the Commissioners of Inland Revenue, and is payable at any time not being less than two months after it is assessed (*k*).

It may be assessed (*l*) on—

- (a) Any person for the time being owning or carrying on the trade or business; or
- (b) Any person acting as agent for the last-named person in carrying on the trade or business; or
- (c) Where a trade or business has ceased, on the person who owned or carried on the same, or acted as agent in owning or carrying on the same, immediately before the time at which it ceased; or
- (d) Where there has been a change of ownership in the trade or business, the Commissioners may, if they think fit, take the accounting period as the period ending on the date on which the ownership has so changed, and assess the duty on the person who owned or carried on the trade or business or acted as agent for the person carrying on the business at that date.
- (e) In the case of trading stock sold otherwise than in the ordinary course of business, on the person by whom or by whose authority the trading stock was sold (*ll*).

The above provisions are very comprehensive, and if there is any doubt as to who owns or carries on the business the Com-

(*h*) Finance Act, 1916, s. 47 (c).

(*i*) Statutory Rules and Orders, 1916, No. 1, Rule (2).

(*k*) Principal Act, s. 45 (1).

(*l*) Ibid. s. 45 (2).

(*ll*) Finance Act, 1918, s. 35.

missioners may assess any of the persons above mentioned at their option.

Notice of an assessment is to be served on the person to be charged, or on the person in whose name he is charged, and the notice may be delivered to the person on whom it is intended to be served, or served upon him by post (*m*). And "service by post" is to have the same meaning as given in the Interpretation Act, 1889, s. 26 (*mm*).

The Commissioners of Inland Revenue may make additional assessments where they deem it necessary at any time within three years from the date of the first assessment, but not where an assessment has been reduced on appeal or by any Court by which an appeal has been re-heard (*n*). The Acts subsequent to the principal Act also provide for assessments in respect of any additional duty made payable by those Acts for past accounting periods.

The Commissioners may, in any case in which they think fit, allow the duty to be paid in instalments of such amount payable at such times as they direct (*o*).

Any person may deposit with the Commissioners any sum of money before the duty is actually payable to meet the duty when it becomes payable, and where money is so deposited in calculating the amount to be applied in payment of duty interest is allowed at a rate determined from time to time by the Treasury (*p*). The present rate of interest is 5 per cent.

The duty is payable at the expiration of two months from assessment. If any deposit to meet the duty is made more than

(*m*) Statutory Rules and Orders, 1916, No. 1, Rules 3 and 4.

(*mm*) ... the service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

(*n*) Statutory Rules and Orders, 1916, No. 1, Rule 11. See *Johnston Brothers & Co. v. Commissioners of Inland Revenue*, (1919) W. N. 230, where additional assessments were made disallowing increased remuneration which had previously been allowed.

(*o*) Principal Act, s. 45 (1).

(*p*) Finance Act, 1916, s. 54.

a week before the last day for payment of the duty the interest is allowed by the Commissioners without request.

The amount of the duty is recoverable as a debt due to His Majesty from the person on whom it is assessed (*q*). Any such amount, if less than 50*l.*, is also recoverable summarily as a civil debt (*r*).

The duty is payable notwithstanding any appeal, except in cases where the Commissioners direct to the contrary, and the Commissioners are to make such repayments, if any, as are necessary to give effect to any decision on appeal as soon as possible after such decision has been given (*s*).

There is an appeal as to the amount of the assessment from the Commissioners of Inland Revenue to the General Commissioners for the division in which the taxpayer is assessed, or to the Special Commissioners (except in cases where a special right of appeal is given under the principal Act) (*t*). The cases in which a special right of appeal is given are—

- (a) In relation to the fixing of the pre-war standard of rent for excess mineral rights duty purposes (*u*). (See chapter on Mineral Rights duty.)
- (b) As to assessment of excess mineral rights duty (*x*).
- (c) As to modification of the provisions of the Fourth Schedule in particular cases where there is a reference to a Board of Referees (*y*). This right of appeal

(*q*) Principal Act, s. 45 (3). As to procedure in revenue cases, see Annual Practice, 1910, 1911 or 1912, Vol. 2, Part 10, and Robertson's Civil Proceedings by or against the Crown.

(*r*) Principal Act, s. 45 (3).

(*s*) Ibid. s. 45 (6).

(*t*) Ibid. s. 45 (5). For explanation as to General and Special Commissioners, see Chapter X. The Special Commissioners have no power to adjust the amount of assessment by reference to a percentage standard where the Commissioners of Inland Revenue have held that it had not been shown to their satisfaction that the pre-war standard on a profits basis was less than the percentage standard: *Port of London Authority v. Commissioners of Inland Revenue*. (1919) W. N. 224.

(*u*) Principal Act, s. 43 (2).

(*x*) Ibid. s. 43 (5).

(*y*) Ibid. s. 40 (3).

includes appeal as to allowances for exceptional depreciation, &c. (z).

- (d) As to increase of statutory percentage as respects any class of trade or business, or as to calculation of the percentage standard in certain cases, and for an alteration in the pre-war standard of profits in certain cases, the application is referred to a Board of Referees (a).
- (e) Any appeal, so far as it involves any question of apportionment under the Finance Act, 1916, s. 47 (b) (which, in the case of the sale of a ship where the profits of the sale are not the profits of a trade or business, provides for the apportionment of the profits of the trade in which the ship has been used in order to estimate separately the profits arising from the use of the ship), is to be to the Special Commissioners (b).
- (f) Any appeal under sect. 22 (1) of the Finance Act, 1917 (which also contains special provisions as to deficiencies and losses of shipping concerns), is to be to the Special Commissioners (c).
- (g) Any appeal by a controlled owner under sect. 40 (3) of the principal Act (*i.e.*, as to modifications of the provisions of the Fourth Schedule to the principal Act) is in certain cases to a referee or board of referees appointed by the Minister of Munitions (cc).

In Ireland there is power to require an appeal to the Special Commissioners to be reheard by the County Court Judge or Chairman of Quarter Sessions or Recorder (d).

The Commissioners of Inland Revenue may make regulations with respect to the assessment and collection of the duty (e), and have made regulations accordingly (f), under

(z) See Chapter 7.

(a) Principal Act, s. 42. And see Chapter II.

(b) Finance Act, 1916, s. 47 (b).

(c) Finance Act, 1917, s. 22 (2).

(cc) Finance Act, 1916, s. 55.

(d) Principal Act, s. 47 (5).

(e) Ibid. s. 45 (7).

(f) Statutory Rules and Orders, 1916, No. 1, dated 6th January, 1916.

which notice of intention to appeal is to be given within thirty days from the date of receipt of notice of assessment or within such further time as the Commissioners of Inland Revenue allow. Such notice is to be given to the surveyor of taxes named in the notice of assessment, and every such notice is to specify the grounds of appeal and, in England, Scotland and Wales, whether the appellant desires that the appeal shall be heard by the General or the Special Commissioners (*g*).

The General and Special Commissioners have all such powers in relation to matters of appeal as are possessed by them in relation to notices of appeal, and the hearing of appeals under any Act for the time being in force relating to income tax (*h*). They are to certify in writing to the appellant and to the Commissioners of Inland Revenue after determining any appeal their decision, and the amount, if any, by which any assessment has been altered (*i*).

The Commissioners of Inland Revenue may nominate any person to represent them on the appeal, and the person nominated is to have the same powers with reference to appeals as may be exercised by a surveyor of taxes with reference to appeals relating to income tax (*k*).

The surveyor of taxes for any purpose in connection with the assessment and collection of the duty and the hearing of appeals may make use of or produce in evidence any returns, correspondence, accounts, &c. to which he has had or may have lawful access for the purpose of income tax, and has also the same right to examine all accounts, &c. furnished to the General or Special Commissioners as he has in the case of appeals relating to income tax (*l*).

Barristers, solicitors, and members of an incorporated society of accountants may be heard on the appeal (*m*).

(*g*) Ibid. Rule 5.

(*h*) See the Income Tax Act, 1918.

(*i*) Rule 6.

(*k*) Rule 7.

(*l*) Rule 8.

(*m*) Rule 9.

Notices to be given to the Commissioners may be given either to them at their principal office in London or to the surveyor of taxes acting for the district in which the person giving such notice resides or carries on business (*n*).

The rules provide that certain sections of the Income Tax Acts are to apply with any necessary modifications '*o*'.

The General or Special Commissioners have power on any appeal to summon witnesses and examine them on oath (*p*). On any such appeal, or on the rehearing of an appeal in Ireland, and on any reference to the Board of Referees, there is power to apply for statement of a case on a point of law, and sect. 59 of the Taxes Management Act, 1880, is to apply with the necessary modifications as it does in the case of appeals to the General or Special Commissioners under the Income Tax Acts (*q*).

Sect. 59 of the Taxes Management Act, 1880 (*r*), provides that immediately upon the determination of any appeal by the General or Special Commissioners, the appellant or the surveyor may, if dissatisfied with the determination as being erroneous in point of law, declare his dissatisfaction to the Commissioners who heard the appeal, and having so done, may within twenty-one days after the determination require the Commissioners, by notice in writing addressed to their clerk, to state and sign a case for the opinion of the High Court thereon. The case is to set forth the facts and the determination, and the party requiring the same is to transmit the case, when so stated and signed, to the High Court within seven days after receiving the same, and previously to or at the same

(*n*) Rule 12.

(*o*) See Rules in Appendix. See also Income Tax Act, 1918, which now replaces the old Acts.

(*p*) Principal Act, s. 45 (4).

(*q*) Ibid. s. 45 (5).

(*r*) 43 & 44 Vict. c. 39. The provisions of the Taxes Management Act, 1880, so far as they relate to income tax are repealed by the Income Tax Act, 1918, but provisions similar to the above are set out in sect. 149 of the latter Act.

time is to give notice in writing of the fact of the case having been stated on his application, together with a copy of the case to the other party, being the surveyor or the appellant, as the case may be.

In relation to cases so stated, and the hearing thereof, the following provisions are to have effect (*s*):—

- (a) The party requiring the case is, before he is entitled to have the case stated, to pay to the Clerk of the Commissioners a fee of 20*s.* for and in respect of the case.
- (b) The High Court is to hear and determine the question or questions of law on a case transmitted, and is to reverse, affirm, or amend the determination in respect of which the case has been stated or remit the matter to the Commissioners with the opinion of the High Court thereon, or may make such other order in relation to the matter, and may make such order as to costs as to the High Court may seem fit, and all such orders are to be final and conclusive on the parties.
- (c) The High Court has power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same is to be amended accordingly, and judgment is to be delivered after it shall have been amended.
- (d) The authority and jurisdiction vested in the High Court shall and may (subject to any rules and orders of the High Court in relation thereto) be exercised by a Judge of the High Court sitting in chambers, and as well in vacation as in term time.
- (e) The High Court may from time to time and as often as they shall see occasion, make and alter rules and orders, to regulate the practice and proceedings in reference to cases stated under the Act.

An appeal lies from the decision of the High Court upon any such case stated to the Court of Appeal, and from thence to the House of Lords (*t*).

(*s*) Taxes Management Act, 1880, s. 59 (2).

(*t*) Ibid. s. 59 (3).

The fact that a case so stated is pending is not to interfere with payment of the duty, but after the appeal any necessary payments or repayments are to be made, with interest allowed by the Court in case of return (*u*).

The power to state a case is probably limited to proceedings before the Commissioners in the nature of an appeal, and the Commissioners do not seem to have power to state a case upon applications to them for relief (*x*). If the Commissioners, acting in the original assessment and not on appeal, exceed their jurisdiction or decline jurisdiction, or do not consider the right question, there may be a remedy by mandamus or certiorari or prohibition (*y*).

The Court may refuse to consider questions not raised in the Court below, but may exercise a jurisdiction as to this (*z*).

It has no power to deal with questions of fact, as to which the finding of the Commissioners is conclusive. The question of the inference to be drawn from the Commissioners' finding of facts is sometimes considered to be one of law, as also is the question whether there is evidence to support the findings of the Commissioners.

The decision on a case stated is an order, and not a judgment, and any appeal must be brought within fourteen days accordingly (*a*).

(*a*) Taxes Management Act, 1880, s. 59 (4).

(*x*) *Bruce v. Burton* (1901), 85 T. L. R. 227; *Grimes v. Lethem* (1898), 3 Tax. Cas. 622; *Russell v. North of Scotland Bank* (1891), 8 R. (Court of Sessions) 543.

(*y*) *R. v. General Commissioners of Taxes for Clerkenwell*, (1901) 2 K. B. 879; *R. v. Income Tax Commissioners for London City* (1904), 91 L. T. 94; *R. v. General Income Tax Commissioners for Offlow* (1911), 27 T. L. R. 353.

(*z*) *City of London Contract Corporation v. Styles* (1887), 4 T. L. R. 51; *Bray v. Lancashire Justices* (1889), 22 Q. B. D. 484.

(*a*) See *Oastow v. Inland Revenue Commissioners* (1893), 25 Q. B. D. 465.

## CHAPTER X.

## MISCELLANEOUS MATTERS.

(1) *Effect on remuneration partly consisting of commission on profits.*

It is quite a common feature of service agreements, where the servant holds a responsible position in the business, to provide for remuneration partly by way of fixed salary and partly by way of commission on the profits. Such agreements are usually satisfactory from both owner's and manager's points of view. The owner can be more assured of the manager doing his best, and the manager has more reason to feel that he himself gets a direct benefit from his efforts, than in the case of payment by salary only. And in some cases the manager is paid only by commission.

Many of these agreements were in existence when excess profits duty was first imposed, and questions soon began to arise as to whether the commission should be calculated before deduction from the total profits of the duty or after such deduction. The question had been before the Courts a number of times, and a number of conflicting decisions given, before the question came before the Court of Appeal.

In *Wm. Hollins & Co., Ltd. v. Paget* (a), by an agreement of service between a company and its manager, whenever the profits of the company during the financial year were more than sufficient to pay the preference dividends, and also a dividend of 7 per cent. on the ordinary shares, the manager, in addition to his fixed salary, was to have by way of commission a sum equal to 5 per cent. of the excess. The company made excess profits within the meaning of that agreement. Mr. Justice Eve held that the excess profits duty ought not to be deducted

(a) (1917) 1 Ch. 187.

before ascertaining the profits on which the manager's commission was to be calculated, and he based his decision upon the view that the duty is a contribution to the Exchequer of a proportion of the company's profits, and for the purposes then in question stands very much on the same footing as income tax.

In *Thomas v. Hamlyn & Co.* (*b*), decided a few days later, the plaintiff was manager of four of the branches of defendants' business, his remuneration being a commission of 15 per cent. on the net profits of those four branches as a whole. The net profits on which the commission was to be payable were to be the net profits after charging all and every expense, including many items by name . . . . "and all other expenses and allowances incurred in connection with the said branches, excepting only the commission payable to" the plaintiff. The net profits were to be certified by the auditors, whose certificates were to be binding and conclusive, unless either party, believing a mistake had been made, should within twenty-one days after receipt of such certificate give notice to the auditors with particulars of the objection, when the auditors should reconsider, and, if necessary, amend the accounts. The auditors gave their certificate, which showed that in arriving at the net profits they had deducted a proportionate amount of the duty payable by the defendants in respect of the whole of their business. The plaintiff did not make any objection to the certificate as provided by the agreement. Mr. Justice Rowlatt held that the excess profits duty could not be computed in deducting the net profits upon which the plaintiff was entitled to receive a commission. As to the contention that the certificate was conclusive, he held that it showed upon its face that it was not such a certificate as was required by the agreement, and that it could not stand in the way of the plaintiff's claim.

In *Fellows, Ltd. v. Corker* (*c*), defendant was managing director of the plaintiff company at a salary and commission on the net profits. The agreement provided in detail how the

(*b*) (1917) 1 K. B. 527.

(*c*) (1918) 1 Ch. D. 9.

net profits were to be arrived at, and expressly provided that income tax (*inter alia*) was not to be deducted in arriving at same. The Inland Revenue Commissioners had allowed the deduction of the defendant's commission before arriving at the amount of profits on which excess profits duty and income tax were payable by the company. Mr. Justice Neville held that no deduction for excess profits duty could be made from the profits before calculating the commission.

In *Collins v. Sedgwick* (d) the question arose on the construction of the articles of association of a private company. There was to be no free market in the shares of the company so long as a purchaser selected by the board was willing to purchase the same at a fixed value, which was to be provided in manner fixed by the articles, being based upon a three years' aggregate of the sums which would have been paid as dividend upon such ordinary shares "if in respect of each of such three years there had been distributed among the members the entire profits of such year available for distribution as dividend." Mr. Justice Peterson held that in ascertaining the fixed value of a share excess profits duty must be deducted before the entire profits of any year available for distribution as dividend among the shareholders could be ascertained; and distinguished excess profits duty from income tax, which, if the company paid, it paid on behalf of the shareholder.

*In re Condran, Condran v. Stark*, also came before Mr. Justice Peterson (e). The question arose under an agreement whereby the purchasers of a business agreed to pay as purchase-money a certain sum on a certain date, and also "one equal third part of the net profits of the business" in the year ending September 30th, 1914, and in each succeeding year up to September 30th, 1918, and in the half year ending March 31st, 1919. In the learned judge's view, the words "net profits" in such an agreement as that mean the profits of the year's trading which are divisible among the persons interested, and he dis-

(d) (1917) 1 Ch. D. 179.

(e) (1917) 1 Ch. D. 639.

tinguished income tax from excess profits duty, the former being payable by the individual partner or shareholder in the business, and the latter being payable in respect of the profits of the business, and not in respect of the benefit which a partner or shareholder derives from the business.

In *Patent Castings Syndicate, Ltd. v. Etherington (f)*, the manager was entitled to a commission of 5 per cent. of the net profits of the year up to £5,000*l.*, and  $7\frac{1}{2}$  per cent. upon such net profits as exceeded £5,000*l.*, and it was also provided that the certificate of the auditors of the company as to what constituted the net profits should be binding and conclusive upon the manager. Mr. Justice Younger held that the duty should be deducted before calculating the commission, and he based his decision upon the same grounds as did Mr. Justice Peterson, *i.e.*, that income tax was payable by the shareholders, while the excess profits duty was a debt of the company to the Crown.

The latter case has now been before the Court of Appeal (*g*), which has confirmed Mr. Justice Younger's judgment, approved Mr. Justice Peterson's decisions and the grounds upon which they were based, and distinguished the other decisions, except that in *Fellows v. Corker (supra)*, which it overruled.

It may be appropriate to note here that managers and others remunerated by commissions are liable to excess profits duty if their incomes reach the point of liability to the duty (*h*), but not if they are whole-time servants (*i*).

## (2) Income Tax.

The amount paid as excess profits duty is allowed as a deduction for the purpose of income tax in computing the profits and gains of the year which included the end of the accounting period in respect of which the excess profits duty has been paid. Any repayment of any amount previously paid by way of excess

(*f*) L. T. J., 22nd March, 1919, p. 363.

(*g*) See L. T. J., 14th June, 1919, p. 110.

(*h*) Principal Act, s. 39. And see Chapter I.

(*i*) *Robins v. Commissioners of Inland Revenue, The Times*, 24th June, 1919.

profits duty is to be treated as profit for the year in which the repayment was received (*k*).

Any excess profits duty which becomes chargeable by virtue only of the provisions of the Finance Act, 1918 (*l*), relating to profits arising from the sale of trading stock otherwise than in the ordinary course of trade is not to be deemed to be excess profits duty for the purpose of the above rule (*m*).

If the excess profits duty is not ascertained in time to allow its deduction from the profits of the year in which its deduction should have been made, the amount by which the income tax would have been reduced had the duty been assessed in time is to be deducted from the duty, or if there is no excess profits duty, is to be repaid to the taxpayer (*n*).

Any excess profits duty and any munitions Exchequer payments which under the provisions of the Finance Act, 1916 (relating to adjustments of excess profits duty and munitions Exchequer payments), are remitted for the purpose of collection, are not to be deemed to have been paid for the purpose of the above rule (*o*).

As the war went on and large sums were spent upon machinery which would be valueless to the owner, or worn out, at the end of the war, heavy deductions were allowed for depreciation, obsolescence, &c. in the calculation of profits for excess profits duty purposes. The allowance for the purposes of income tax was not so liberal, however, and special provision was made in the Finance Act, 1916 (*p*), for repayment of income tax on the amount deducted for purposes of munitions Exchequer payments, but not deducted in assessing the profits for income tax

(*k*) Principal Act, s. 35 (1). Repealed by Income Tax Act, 1918, but similar provisions contained in 1st Sched. in Rules applicable to assessment under Sched. D.

(*l*) Sect. 31.

(*m*) Income Tax Act, 1918, 1st Sched.—Rules applicable to Sched. D.

(*n*) Principal Act, s. 35 (2). Repealed by Income Tax Act, 1918, but re-enacted. See 1st Sched.—Sched. D. Rules.

(*o*) Finance Act, 1916, s. 48 (2), and Income Tax Act, 1918, 1st Sched.—Sched. D. Rules.

(*p*) Sect. 39 (1).

purposes. This provision was extended to the case of excess profits duty by the Finance Act, 1917 (*q*). These provisions were repealed by the Income Tax Act, 1918, which provides (*r*) in effect that where in calculating for the purposes of excess profits duty the profits of a controlled establishment, a deduction has been allowed in respect of exceptional depreciation or obsolescence of buildings, plant or machinery, and the sums so deducted have not been deducted or allowed in computing the assessment for income tax purposes, there shall be allowed a repayment of tax equal to the amount of the tax at the rate at which that tax has been paid, on the amount of the sums so deducted. Provided that repayment of the tax (*a*) is to be made in respect of the year of assessment (*i.e.*, the income tax year), which includes the end of the accounting period in respect of which the deductions have been allowed for excess profits duty purposes, and (*b*) is to be deemed to have effected a reduction of the income tax assessment by the amount upon which tax has been so repaid.

The provisions above for repayment of the tax apply only in the case of controlled establishments, and for any period during which it is subject to control (*s*). Repayment under the above provisions is not to be allowed, in respect of the same deduction, made in relation to both munitions Exchequer payments and excess profits duty (*t*). In fact, both munitions Exchequer payments and excess profits duty may be payable by the same person, and hence this provision.

If there are no profits or gains chargeable in any year, or no sufficient profits or gains to allow full effect to be given to the above provisions for deduction from the income tax assessment of the same amount as is allowed in calculating the profits for excess profits duty purposes, a deduction may be made in succeeding years in order to give full effect to those provisions (*u*). Income

(*q*) Sect. 16 (1).

(*r*) Sect. 53 (2).

(*s*) Income Tax Act, 1918, s. 53 (2).

(*t*) See Chapter XI.

(*u*) Income Tax Act, 1918, s. 53 (3), and 1st Sched.—Rules relating to Sched. D. 6 (3).

tax is assessed upon the average profits or gains of three years, while the excess profits duty is charged on the excess profits of the individual year, hence the amount of profits shown for purposes of excess profits duty may be very different from the amount of profits or gains for the same year as chargeable to income tax.

As the benefit of the provisions allowing for the purpose of assessment of income tax the same deductions in respect of exceptional depreciation, &c., as are allowed for the purpose of excess profits duty, is given to controlled establishments only, a considerable injustice is done to smaller firms who were not controlled. Probably these are very numerous, though not individually large. They may have been able to get an allowance up to 33 per cent. for exceptional depreciation, &c. in estimating their profits for excess profits duty purposes, but as the benefit of the above provisions has not been extended to them, the only depreciation they could get allowed has been a very much smaller one. The result in one case known to the writer (and there are probably many others similar) works out as follows:—In 1918, say, the uncontrolled owner purchases additional machinery for war work only to the value of 2,000*l.*. The machinery is second-hand, inflated in price, and will be worth about scrap value only after the war. Say it is worth 500*l.* after the war. When the owner makes up his accounts at or after the end of the war for excess profits duty purposes he will be entitled to claim as a deduction for depreciation, obsolescence, &c. of plant, 1,500*l.*, being the difference between the cost to him and the pre-war value (*x*). The excess profits duty will therefore be calculated on the balance of the excess profits after deducting that sum. That deduction of 1,500*l.* is really a return to the owner of the capital expended by him for war work. But when he is assessed for income tax purposes the Commissioners will refuse to allow any such deduction. He will, for income tax purposes, be entitled to such deduction as the Commissioners may consider just and reason-

(*x*) See Chapter VII.

able as representing the diminished value by reason of wear and tear during the year (*y*). The owner will have to pay income tax on the difference between the last-mentioned deduction and the 1,500*l.*; in other words, he will be paying income tax on some of the capital expended by him for war work.

As to deduction of income tax from rent in the case of minerals, see "Minerals."

### (3) *General and Special Commissioners.*

The expression "General Commissioners" means the Commissioners for the general purposes of the Acts relating to income tax, and the expression "Special Commissioners" means the Commissioners for the special purposes of those Acts (*z*).

The "General Commissioners" are now appointed under the Income Tax Act, 1918, ss. 58 to 66, and a certain number are appointed for each division. To them are referred all matters relating to income tax under Schedules A., B. and D., so far as they are not directed by the Act to be executed, and under Schedule E. so far as they are not executed by any other Commissioners. The Income Tax Act contains provisions for their appointment, for additional Commissioners, for meetings, &c.

The "Special Commissioners" are appointed under the Income Tax Act, 1918, s. 67, for such duties as are assigned to them by the Act.

### (4) *Apportionment of accounting periods.*

Each Act which has altered the rate of duty has provided for an apportionment of the profits or losses between the portion of the accounting period before and the accounting period after the date as from which the rate is altered (*a*). There is also a general provision contained in the Finance Act, 1917 (*b*),

(*y*) Income Tax Act, 1918, 1st Sched.—Rules applicable to cases I. and II., Sched. D. 6 (1).

(*z*) Principal Act, s. 51.

(*a*) See Finance Act, 1916, s. 45; ibid. 1917, s. 20 (1).

(*b*) Sect. 27.

that where part of an accounting period, or of an accounting year, or of any period in respect of part of which munitions Exchequer payments are chargeable, is after, and part before, the beginning of the 1st January, 1917, the total excess profits and any deficiencies or losses arising in any such accounting period, and the total excess rent for any such accounting year, and the total profits in respect of part of which munitions Exchequer payments are chargeable, shall be apportioned between the time up to, and the time after, that date in proportion to the number of months or fractions of months before and after that date respectively.

The Finance Act, 1919 (*c*), provides also that where part of an accounting period is after, and part before the beginning of the 1st January, 1919, the total excess profits and any deficiencies or losses arising in any such accounting period, and the total excess rent for any such accounting year, shall be apportioned between the time up to and the time after that date in proportion to the number of months or fractions of months before and after that date respectively.

### (5) *Secrecy.*

All Commissioners and other persons concerned in the assessment or collection of the duty are subject to the same obligations to secrecy as those persons are subject to in connection with income tax, and any oath by them as to secrecy extends also to secrecy as to this duty (*d*). But this does not prevent disclosure to the Government of any of His Majesty's possessions of any facts necessary to enable arrangements to be made for carrying out the provisions of the Finance Act, 1917, s. 23, for apportionment of excess profit duties between the British Government and the Government of the possession and relief in either country in respect of excess profits duty payable in the other country (*e*).

(*c*) Sect. 35.

(*d*) Principal Act, s. 45 (8).

(*e*) Finance Act, 1917, s. 23 (3).

## CHAPTER XI.

## CONTROLLED ESTABLISHMENTS AND MUNITIONS EXCHEQUER PAYMENTS.

By the Munitions of War Act, 1915, the Minister of Munitions was empowered to make an order declaring any establishment in which munitions work was carried on to be a controlled establishment (*a*). Any excess of the net profits of the controlled establishment over the amount divisible under the Act was to be paid into the Exchequer (*b*). The net profits were to be ascertained in accordance with the provisions of sect. 5 and rules made thereunder, and the amount of profits divisible under the Act was to be an amount exceeding by one-fifth the standard amount of profits (*c*). The standard amount of profits for any period was to be the average of the amount of the net profits for the two financial years of the establishment completed next before the outbreak of the war or a proportionate part thereof (*d*).

If in any case it appeared or was represented to the Minister of Munitions that the net profits or losses of all or any other establishments belonging to the same owner should be brought into account, or that the average under the section afforded an unfair standard of comparison, or no standard of comparison, or that no such average exists (*e*), the Minister might, if he thought just, allow or require (*e*) those net profits or losses to be brought into account, or substitute for the average such an

(*a*) Sect. 4.

(*b*) Ibid. (1).

(*c*) Sect. 5 (1).

(*d*) Ibid. (2).

(*e*) Munitions of War (Amendment) Act, 1916, s. 19.

amount as the standard amount of profits as might be agreed upon with the owner (*f*).

The Minister might, if he thought fit, and should if the owner so required, refer the matter to be determined by a referee or board of referees, appointed or designated by him for the purpose, and the decision of the referee or board was to be conclusive for all purposes.

The Commissioners of Inland Revenue may now treat as belonging to the same owner any establishment in which the same person has a controlling or preponderating influence (*g*).

The Minister was empowered to make rules for carrying the section into effect, and the rules were to provide for due consideration being given in carrying out the provisions of the section as respects any establishment to any special circumstances such as increase of output, provision of new machinery or plant, alteration of capital or other matters which require special consideration in relation to the particular establishment (*h*).

It should be added that any proposal for any change in the rate of wages, salary, or other emoluments of any class of persons employed in the establishment, or of any persons engaged in the management or direction of the establishment (with certain exceptions), was to be submitted to the Minister of Munitions, who might withhold his consent within fourteen days of the submission (*i*).

If the Minister so directed, or if he withheld his consent and the owner so required, the matter was to be referred to the arbitration tribunal set up by the Act.

The payments to the Exchequer above provided for became known as "Munitions Exchequer payments" (*k*).

(*f*) Sect. 5 (3).

(*g*) Finance Act, 1917, s. 24 (3).

(*h*) See Statutory Rules and Orders, 1916, No. 549. The Munitions (Limitation of Profits) Rules, 1915, dated September 15th, 1915. See Appendix A.

(*i*) Sect. 4 (2).

(*k*) Finance Act, 1916, s. 57; Finance Act, 1917, s. 28, and Income Tax Act, 1918, 1st Sched.—Rules under Sched. D.

The Commissioners may treat any sums actually paid in respect of munitions Exchequer payments, which appear to the Commissioners to be attributable to the same period and subject matter as that for which excess profits duty is paid, as a payment on account of excess profits duty, or, if the amount of the munitions Exchequer payments is larger than the amount payable as excess profits duty, as extinguishing the latter; and if the excess profits duty is paid before the munitions Exchequer payment, the Commissioners may arrange with the Minister of Munitions for the deduction of excess profits duty payments from any sums to be collected for munitions Exchequer payments, or if the amount of excess profits duty payments is greater than the amount to be collected on account of munitions Exchequer payments for the extinction of the amount to be so collected. For the purpose of determining the period to which any profits are to be attributed, profits are to be deemed to accrue from day to day at a uniform rate (*l*).

Any excess profits duty and any munitions Exchequer payments remitted under the foregoing section for the purpose of collection are not to be deemed to have been paid for the purpose of sect. 35 of the principal Act, as extended by the present Act. Sect. 35 of the principal Act contains provisions for allowing deduction of excess profits duty from the gains and profits in assessments for income tax purposes, and sect. 53 of the Finance Act, 1916, applied that section, with a qualification, to munitions Exchequer payments. Both the last named sections are now repealed, however, and the Income Tax Act, 1918 (*m*), contains provisions to replace them. These provisions are contained in the First Schedule, Rules applicable to Schedule D., cases I. and II., para. 4, and the rules applicable to excess profits duty (*n*) are to apply to sums actually paid in respect of munitions Exchequer payments, except that where effect cannot be given to the deduction of munitions Exchequer

(*l*) Finance Act, 1916, s. 48 (1).

(*m*) 8 & 9 Geo. 5, c. 40.

(*n*) See Chapter X.

payments when assessing income tax, owing to the time at which the munitions Exchequer payment became ascertained, the amount by which the income tax would have been reduced had the munitions Exchequer payment been ascertained is to be repaid, and is not to be a deduction from the munitions Exchequer payment (*o*).

Where for the purposes of the calculation of the munitions Exchequer payments a deduction has been allowed in respect of exceptional depreciation or obsolescence of buildings, plant, or machinery (*p*), and the sums so deducted have not been deducted or allowed in computing the amount upon which income tax has been paid in respect of those profits, there shall be allowed a repayment of tax equal to the amount of the tax at the rate at which that tax has been paid on the amount of the sums so deducted; provided that the repayment of tax is to be made in respect of the income tax year which includes the period of assessment in respect of which the said deductions have been allowed in assessing the munitions Exchequer payment, and shall be deemed to have effected a reduction of the income tax assessment by the amount on which the tax has been repaid (*q*).

The above provisions were rendered necessary by the fact that although exceptional depreciation, obsolescence, &c. were allowed in calculating the munitions Exchequer payment, the allowance under the Income Tax Acts was not so liberal. To meet that case provision for repayment of the proper amount of income tax was made.

Any application for relief under this section is to be made to the Commissioners by whom the income tax assessment was made (*r*).

Munitions Exchequer payments ceased to be payable as regards any profits arising after the 31st December, 1916, or

(*o*) Para. 4 (4).

(*p*) The Munitions (Limitation of Profits) Rules, 1915, allow deductions for exceptional wear and tear, &c. See rules in Appendix A.

(*q*) Income Tax Act, 1918, s. 53.

(*r*) Income Tax Act, s. 53 (4). As to wear and tear, depreciation, &c., see Chapter VII.

apportioned to the period after that date (*s*), though questions may still arise as to accounts prior thereto.

Munitions Exchequer payments arising on or before 31st December, 1916, or apportioned to the period down to and including that date, are, after the 2nd August, 1917, to be assessed and collected, or if already assessed but not collected, collected, by the Commissioners of Inland Revenue, and are to be computed in accordance with the Munitions of War Act, 1915, and the rules made thereunder, and the Commissioners are to have all the powers of the Ministry of Munitions for those purposes (*t*). For the purpose of such assessment and collection the provisions for the time being as to assessment and collection of excess profits duty are to apply, and the provisions of sect. 48 of the Finance Act, 1916, relating to the adjustment of excess profits duty and munitions Exchequer payments, are to apply subject to such modifications as may be necessary in consequence of the transfer of powers above to the Commissioners (*t*).

Sub-sects. (2) and (3) of sect. 49 of the Finance Act, 1916, as to the recovery from the director of payments of excess profits duty in respect of increased directors' fees, apply for the purposes of munitions Exchequer payments as they apply for the purposes of excess profits duty, with the necessary modifications (*u*).

For the benefit of those who have questions as to Munitions Exchequer payments still outstanding the Acts and rules relating thereto are set out in the Appendix.

(*s*) Finance Act, 1917, s. 24 (1).

(*t*) Ibid. s. 24 (2). See rules in Appendix A.

(*u*) Ibid. s. 24 (4). And see Chapter IX.

## APPENDIX A.

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### MUNITIONS OF WAR ACT, 1915.

(5 & 6 GEO. 5, c. 54.)

#### PART II.

**4. Controlled establishments.]**—If the Minister of Munitions considers it expedient for the purpose of the successful prosecution of the war that any establishment in which munitions work is carried on should be subject to the special provisions as to limitation of employers' profits and control of persons employed and other matters contained in this section, he may make an order declaring that establishment to be a controlled establishment, and on such order being made the following provisions shall apply thereto:—

- (1) Any excess of the net profits of the controlled establishment over the amount divisible under this Act, as ascertained in accordance with the provisions of this Act, shall be paid into the Exchequer.
- (2) Any proposal for any change in the rate of wages, salary, or other emoluments of any class of persons employed in the establishment, or of any persons engaged in the management or the direction of the establishment, (other than a change for giving effect to any Government conditions as to fair wages or to any agreement between the owner of the establishment and the workmen which was made before the twenty-third day of June, nineteen hundred and fifteen) (a), shall be submitted to the Minister of Munitions, who may withhold his consent within fourteen days of the date of the submission:

Provided that if the Minister of Munitions so directs, or if the Minister's consent is withheld and the persons

(a) See amendment, **Munitions of War (Amendment) Act, 1916**, s. 11.

proposing the change so require, the matter shall be referred for settlement in accordance with the provisions of the First Schedule to this Act, and the consent of the arbitration tribunal, if given, shall in that case have the same effect as the consent of the Minister of Munitions.

If the owner of the establishment or any contractor or sub-contractor employing labour therein makes any such change, or attempts to make any such change, without submitting the proposal for the change to the Minister of Munitions or when the consent of the Minister has been withheld, he shall be guilty of an offence under this Act.

\* \* \* \* \*

*5. Supplementary provisions as to the limitation of the profits of a controlled establishment.]—(1)* The net profits of a controlled establishment shall be ascertained in accordance with the provisions of this section and rules made thereunder and the amount of profits divisible under this Act shall be taken to be an amount exceeding by one-fifth the standard amount of profits.

(2) The standard amount of profits for any period shall be taken to be the average of the amount of the net profits for the two financial years of the establishment completed next before the outbreak of the war or a proportionate part thereof.

(3) If in any case it appears or is represented to the Minister of Munitions that the net profits or losses of all or any other establishments belonging to the same owner should be brought into account, or that the average under this section affords or may afford an unfair standard of comparison or affords no standard of comparison, the Minister may, if he thinks just, allow those net profits or losses to be brought into account, or substitute for the average such an amount as the standard amount of profits as may be agreed upon with the owner of the establishment.

The Minister of Munitions may, if he thinks fit, and shall, if the owner of the establishment so requires, refer the matter to be determined by a referee or board of referees appointed or designated by him for the purpose, and the decision of the referee or board shall be conclusive on the matter for all purposes.

(4) The Minister of Munitions may make rules for carrying the provisions of this section into effect, and these rules shall

provide for due consideration being given in carrying out the provisions of this section as respects any establishment to any special circumstances such as increase of output, provision of new machinery or plant, alteration of capital or other matters which require special consideration in relation to the particular establishment.

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## STATUTORY RULES AND ORDERS, 1916, No. 549.

### MUNITIONS OF WAR.

#### CONTROLLED ESTABLISHMENTS.

**THE MUNITIONS (LIMITATION OF PROFITS) RULES, 1915, DATED SEPTEMBER 15, 1915, MADE BY THE MINISTER OF MUNITIONS IN PURSUANCE OF SECTION 5 (4) OF THE MUNITIONS OF WAR ACT, 1915 (5 & 6 GEO. 5, c. 54), WITH RESPECT TO THE LIMITATION OF PROFITS OF A CONTROLLED ESTABLISHMENT.**

The Minister of Munitions in pursuance of section 2 of the Rules Publication Act, 1893, hereby certifies that on account of urgency it is desirable that the following rules should come into immediate operation, and he therefore in pursuance of the above section and section 5, sub-section 4, of the Munitions of War Act, 1915, hereby makes the following rules, to come into operation forthwith as provisional rules (a):—

1. These rules may be cited as "The Munitions (Limitation of Profits) Rules, 1915."

2. In these rules, unless the context otherwise requires:—

"The Act" means the Munitions of War Act, 1915.

"The Minister" means the Minister of Munitions for the time being.

(a) The provisions of sects. 1 and 2 of the Rules Publication Act, 1893 (56 & 57 Vict. c. 66) relating to Draft and Provisional Rules no longer apply to Rules made under the Munitions of War Acts, 1915 and 1916 (*see* sect. 25 of the Munitions of War (Amendment) Act, 1916 (5 & 6 Geo. 5, c. 99)), and these Rules of 1915 have effect as if they were Statutory Rules within sect. 3 of the said Rules Publication Act.

“Controlled establishment” means an establishment or part of an establishment in respect of which an order has been made by the Minister pursuant to section 4 of the Act.

“Controlled owner” means the company, firm or person by whom a controlled establishment is for the time being owned or managed.

“Period of assessment” means any period within the period of control for which profits are to be ascertained for the purposes of the Act.

“Period of control” means the period commencing with the date specified by the Minister upon making an order under section 4 of the Act declaring an establishment to be a controlled establishment, and ending on the date when such establishment ceases to be controlled under the Act.

“Standard period” means the two financial years of a controlled establishment completed next before the 4th August, 1914.

“Standard amount of profits” means the average of the amount of the net profits of a controlled establishment for the standard period ascertained or determined in accordance with the Act and these rules, or a proportionate part thereof.

“The referee” means the referee or the Board of Referees referred to in section 5 (3) of the Act.

“Audited” means audited by a chartered or incorporated accountant or by an accountant approved in any particular case by the Board of Trade.

3. The Interpretation Act, 1889, shall apply for the purpose of the interpretation of these rules as it applies for the purpose of the interpretation of an Act of Parliament.

#### *Net Profits of a Controlled Establishment.*

4. For the purposes of these rules net profits of a controlled establishment shall be deemed to be profits which would have accrued to the controlled owner in respect of work done in such establishment if such profits had been arrived at before bringing into account any sums in respect of income tax or interest or (except so far as the Minister may otherwise allow, or as may be

necessary in any case where net profits or losses of any other establishment belonging to the controlled owner are brought into account for the purpose of the Act or these rules) in respect of assets not employed in the controlled establishment, and (subject as aforesaid) after allowing proper selling, office, or other expenses, or apportionments thereof.

*Standard Amount of Profits.*

5. Within six weeks of being requested by the Minister so to do the controlled owner shall deliver to the Minister such audited accounts and particulars in respect of the controlled establishment and of any other establishment belonging or partly belonging to the controlled owner as the Minister may require.

6. As soon as may be after the receipt by the Minister of the accounts and particulars referred to in rule 5, or where any controlled owner has failed to supply the Minister with the same or any of them within the time appointed, then as soon as may be thereafter the Minister shall deliver to the controlled owner notice of the amount at which the Minister is prepared to agree the standard amount of profits, and unless within fourteen days thereafter the controlled owner shall serve upon the Minister notice of objection, the said amount shall be deemed to have been agreed and to be the standard amount of profits. If objection shall be so served and the Minister and the controlled owner are unable to settle the standard amount of profits by agreement, the matter shall be remitted by the Minister to the referee for determination.

The amount which the referee shall thereupon determine shall be deemed to be the standard amount of profits, whether the amount so determined be greater or less than the amount which the Minister was prepared to agree as aforesaid.

*Net Profits for a Period of Assessment.*

7.—(i) The accounts in respect of a controlled establishment for any financial year or period which includes a period of assessment shall, unless the Minister otherwise allows or requires, be made up to dates corresponding to those to which, and on the same basis as nearly as may be, as the accounts in respect of that establishment for the standard period were made up.

(ii) Where any such financial year or period is greater than

the period of assessment, the net profits for the period of assessment shall, unless the Minister otherwise allows or requires, for the purposes of these rules, be taken to be the same proportion of the net profits for the financial year or period as the period of assessment is of the financial year or period.

(iii) Except so far as the Minister shall otherwise expressly declare in any particular case, no period of assessment shall be of greater length than one year, and if and whenever the Minister shall consider it necessary so to do he shall fix the dates at which any period of assessment shall be deemed to commence and terminate.

8. Within three calendar months of the expiration of any financial year or period covering a period of assessment the controlled owner shall deliver to the Minister:—

(a) Audited accounts and particulars for that financial year or period similar to those relating to the standard year or period required under rule 5;

(b) A statement setting out the adjustments (if any) which he claims should be made in the accounts so delivered in respect of any matter to which due consideration may be given under rule 9, and whether he requests any addition to the standard amount of profits under rule 10;

(c) A declaration (which if so required by the Minister shall be a statutory declaration) made by the controlled owner and his auditor (or in the case of the controlled owner being an incorporated company, by the chairman or managing director or the responsible officer and the auditor of the company), declaring that the accounts are prepared strictly in accordance with rule 7, except so far as is otherwise expressly therein declared, and that neither the controlled owner nor such officer has been party or privy to any transaction which might operate to prejudice the Exchequer in respect of excess profits under the Act.

9. In determining the net profits for any period of assessment, due consideration shall be given to, and any appropriate adjustments may be made in respect of all or any of the following matters, that is to say:—

(a) Exceptional wear and tear of plant, buildings and machinery;

- (b) Capital expenditure specially incurred for the purpose of munitions work;
- (c) The probable value to the controlled owner at the end of the period of control of any plant, buildings or machinery erected or installed or other expenditure incurred for munitions work, since the 4th August, 1914;
- (d) Special provisions or terms of any contracts entered into between the Government and the controlled owner;
- (e) Any exceptional services rendered by the controlled owner in connection with the controlled establishment;
- (f) Any increase in salaries or other emoluments of any persons engaged in the management or direction of the controlled establishment made since the end of the standard period, or any steps taken since the end of that period which might operate to decrease net profits;
- (g) Generally any other matter which may appear to the Minister, or to the referee, as the case may be, material to be taken into account;

Any such adjustments may be made either by additions to or deductions from the standard amount of profits or by way of charges or disallowance of charges against profits for the period of assessment.

10.—(i) For the purpose of ascertaining the excess of the net profits of a controlled establishment for any period of assessment in any case where (a) the average amount of capital employed in a controlled establishment during the period of assessment is greater than the average during the standard period, or (b) the volume of output of a controlled establishment for the period of assessment is proportionately greater than the volume of output for the standard period, there shall, at the request of the controlled owner, be added to the standard amount of profits whichever of the following sums may be the greater, that is to say:—

- (a) Such sum (in lieu of, or, at the discretion of the Minister, in addition to the one-fifth referred to in section 5 (1) of the Act) as shall be equivalent to interest at the rate of eight per centum per annum on such amount as the Minister shall decide is the amount of the additional average capital, or
- (b) Such sum (in lieu of, or, at the discretion of the Minister, in addition to the said one-fifth) amounting to such

fraction of the additional net profits which in the opinion of the Minister might fairly have been earned in the standard period by an equivalent additional volume of output as the Minister shall decide will, in the circumstances of the case, afford a reasonable return in respect of the additional volume of output.

In determining what is additional average capital for the purposes of this rule, capital provided by the Government shall be excluded, but temporary loans (other than capital so provided) and undivided ascertained profits employed in the business may be treated as capital.

For the purposes of this rule the output of a controlled establishment for a period of assessment shall be deemed to be the same proportion of the output for the financial year or period which covers the period of assessment which the period of assessment is of that financial year or period.

(ii) The Minister shall, when delivering to the controlled owner notice of the amount at which the Minister is prepared to agree the net profits for any period of assessment to which this rule applies, state the sum which the Minister has decided shall be added under this rule to the standard amount of profits.

If the controlled owner when serving on the Minister notice of objection to the amount at which the Minister is prepared to agree such net profits, shall also serve notice that he objects to the sum which the Minister has decided is to be added under this rule to the standard amount of profits, the referee, in determining the net profits for the said period of assessment, shall have the like power to that conferred upon the Minister by this rule and the sum (if any) added by the referee to any standard amount of profits under this rule may be greater or less than the sum which the Minister decided was to be added thereto.

**11.** As soon as may be after the receipt by the Minister of the accounts and particulars referred to in rule 8 and such other accounts and particulars as the Minister may have required, or where any controlled owner has failed to supply the Minister with the same or any of them within the time appointed, then so soon as may be thereafter the Minister shall deliver to the controlled owner notice of the amount at which the Minister is prepared to agree the net profits for the period of assessment, and unless within fourteen days thereafter the controlled owner shall

serve upon the Minister notice of objection, the said amount shall be deemed to have been agreed and to be the net profits for such period of assessment. If objection shall be so served and the Minister and the controlled owner are unable to settle such net profits by agreement, the matter shall be remitted by the Minister to the referee for determination.

The amount which the referee shall thereupon determine shall be deemed to be the net profits for such period of assessment, whether the amount so determined be greater or less than the amount which the Minister was prepared to agree as aforesaid.

**12.** In ascertaining or determining net profits for the final period of assessment proper adjustments may be made in respect of the whole period of control in regard to any matters referred to in rule 9, so far as it may then be shown that sufficient adjustments have not been made in regard thereto in ascertaining or determining net profits for any previous period or periods of assessment.

**13.—(i)** Any excess of the net profits of any controlled establishment for any period of assessment over the amount thereof divisible under the Act as ascertained or determined in accordance with the Act and these rules shall be paid to the Minister for the credit of the Exchequer by the controlled owner within fourteen days after the amount of such excess has been ascertained or determined, or in any special circumstances within such extended time as the Minister may allow, and the Minister may make such allowance on such terms as he shall in each case think proper.

(ii) If in the opinion of the Minister a substantial sum will be payable to the Minister for the credit of the Exchequer as the excess of the net profits of any controlled establishment for any period of assessment, then notwithstanding that the amount of such net profits has not been ascertained or determined the Minister may, after the expiration of the period fixed by rule 8 for the delivery of accounts, require provisional payment to be made to him for the credit of the Exchequer on account of such excess in such manner as he shall direct, and payment shall be made by the controlled owner accordingly.

(iii) If on making any such adjustments as are provided for by rule 12, it shall be shown that a controlled owner has paid to the Minister for the credit of the Exchequer more than having regard to such adjustments he should have paid, the Minister

shall on the application of the controlled owner refund to him the amount so overpaid.

*General.*

**14.**—(i) All balance sheets, accounts and statements relating to any controlled establishment shall be subject to examination by an accountant nominated by the Minister, and the controlled owner shall at all reasonable times afford to such accountant proper facilities for inspecting all books, documents and records relating to the controlled establishment or any other establishment belonging or partly belonging to the controlled owner, which may be necessary to enable such accountant properly to examine and check any such balance sheets, accounts or statements and shall afford to any other person nominated by the Minister access to and proper facilities for inspecting any plant, stock and other assets of any such establishment and any documents and sources of information which may be necessary for the performance of his duties, and the controlled owner shall give to or procure for the said accountant all accounts and information and for any such other person all information which may be necessary for such purposes. The controlled owner shall at all times furnish to the Minister or to the referee all such documents and information as they may respectively require with regard to the controlled establishment or any other establishment belonging to the controlled owner.

(ii) If any question shall arise as to whether any inspection, extract or information required by any such accountant or such other person under this rule is necessary for any such purpose, the matter in difference shall on the application of either party thereto, or may at the instance of the Minister, be referred to and shall be determined by the referee.

**15.** Any time limited by these rules may be extended by the Minister from time to time and that notwithstanding that the time limited has expired.

**16.** In the event of a Board of Referees being appointed or designated by the Minister under the Act, two members of the Board shall constitute a quorum.

**17.** The decision of the referee on any matter referred to him shall be conclusive on the matter for all purposes.

**18.** Any notice or other document required by these rules to be served or delivered may be sent through the post properly

addressed in a prepaid registered letter, and unless the contrary is proved, shall be deemed to have been served or delivered in the ordinary course of post.

19. Any failure to comply with any provision of these rules after being required so to do by the Minister shall be an offence under the Act.

20. These rules shall come into force on the fifteenth day of September, 1915.

Signed by order of the Minister of Munitions this fifteenth day of September, 1915.

*H. Llewellyn Smith,*  
General Secretary to the Ministry  
of Munitions.

Ministry of Munitions,  
6, Whitehall Gardens, S.W.

### FINANCE (No. 2) ACT, 1915.

(5 & 6 GEO. 5, c. 89.)

35. *Computation of profits and gains in relation to excess profits duty.*—(1) Where any person has paid excess profits duty under this Act the amount so paid shall be allowed as a deduction for the purpose of income tax in computing the profits and gains of the year which included the end of the accounting period in respect of which the excess profits duty has been paid; but where any person has received repayment of any amount previously paid by him by way of excess profits duty, the amount repaid shall be treated as profit for the year in which the repayment is received.

The payment of excess profits duty shall not be deemed to be a specific cause for the purposes of section one hundred and thirty-four of the Income Tax Act, 1842.

(2) Where in any income tax year the profits or gains from which a deduction may be made under this section come into computation, but owing to the time at which the amount of excess profits duty became ascertained it was impracticable to give effect to the deduction when assessing income tax, the amount by which the income tax would have been reduced if effect had been given to the deduction shall be deducted from the amount payable for

excess profits duty or, if there is no excess profits duty, shall be repaid to the taxpayer.

### PART III.

#### EXCESS PROFITS DUTY.

**38. Charge of excess profits duty.]**—(1) There shall be charged, levied, and paid on the amount by which the profits arising from any trade or business to which this Part of this Act applies, in any accounting period which ended after the 4th day of August nineteen hundred and fourteen, and before the 1st day of July nineteen hundred and fifteen, exceeded, by more than two hundred pounds, the pre-war standard of profits as defined for the purposes of this Part of this Act, a duty (in this Act referred to as "excess profits duty") of an amount equal to fifty per cent. of that excess.

(2) For the purposes of this Part of this Act the accounting period shall be taken to be the period for which the accounts of the trade or business have been made up, and where the accounts of any trade or business have not been made up for any definite period, or for the period for which they have been usually made up, or a year or more has elapsed without accounts being made up, shall be taken to be such period not being less than six months or more than a year ending on such a date as the Commissioners of Inland Revenue may determine.

Where any accounting period is a period of less than a year this section shall have effect as if there were substituted for two hundred pounds a proportionately reduced amount.

(3) Where a person proves that in any accounting period, which ended after the fourth day of August nineteen hundred and fourteen, his profits have not reached the point which involves liability to excess profits duty, or that he has sustained a loss in his trade or business, he shall be entitled to repayment of such amount paid by him as excess profits duty in respect of any previous accounting period, or to set off against any excess profits duty payable by him in respect of any succeeding accounting period, such an amount as will make the total amount of excess profits duty paid by him during the whole period accord with his profits or losses during that period.

**39. Trades and businesses to which excess profits duty applies.]**—The trades and businesses to which this Part of this Act applies

are all trades or businesses (whether continuously carried on or not) of any description carried on in the United Kingdom, or owned or carried on in any other place by persons ordinarily resident in the United Kingdom, excepting—

- (a) husbandry in the United Kingdom; and
- (b) offices or employments; and
- (c) any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on and in which no capital expenditure is required, or only capital expenditure of a comparatively small amount,

but including the business of any person taking commission in respect of any transactions or services rendered, and of any agent of any description (not being a commercial traveller, or an agent whose remuneration consists wholly of a fixed and definite sum not depending on the amount of business done or any other contingency).

*40. Determination of profits and pre-war standard.]*—(1) The profits arising from any trade or business to which this Part of this Act applies shall be separately determined for the purpose of this Part of this Act, but shall be so determined on the same principles as the profits and gains of the trade or business are or would be determined for the purpose of income tax, subject to the modifications set out in the First Part of the Fourth Schedule to this Act and to any other provisions of this Act.

(2) The pre-war standard of profits for the purposes of this Part of this Act shall, subject to the provisions of this Act, be taken to be the amount of the profits arising from the trade or business on the average of any two of the three last pre-war trade years, to be selected by the taxpayer (in this Part of this Act referred to as the profits standard): Provided that if it is shown to the satisfaction of the Commissioners of Inland Revenue that that amount was less than the percentage standard as hereinafter defined, the pre-war standard of profits shall be taken to be the percentage standard.

The percentage standard shall, for the purposes of this Part of this Act, be taken to be an amount equal to the statutory percentage on the capital of the trade or business as existing at the end of the last pre-war trade year, subject, however, to the

provisions of this Act as to any alteration in the manner of calculating the percentage standard in special cases.

The statutory percentage shall be six per cent. in the case of a trade or business carried on or owned by a company or other body corporate, and seven per cent. in the case of any other trade or business, subject, however, to the provisions of this Act as to the increase in that percentage in certain cases.

The provisions contained in the Second Part of the Fourth Schedule to this Act shall have effect with respect to the computation of the profits of a pre-war trade year, and the provisions contained in the Third Part of the Fourth Schedule shall have effect with respect to the ascertainment of capital for the purposes of this Part of this Act.

"The last pre-war trade year" means the year ending at the end of the last accounting period before the fifth day of August nineteen hundred and fourteen, and "the three last pre-war trade years" means the three years ending at the three corresponding times.

(3) Where it appears to the Commissioners of Inland Revenue, on the application of a taxpayer in any particular case, that any provisions of the Fourth Schedule to this Act should be modified in his case, owing to a change in the constitution of a partnership, or to the postponement or suspension, as a consequence of the present war, of renewals or repairs, or to exceptional depreciation or obsolescence of assets employed in the trade or business due to the present war, or to the necessity in connection with the present war of providing plant which will not be wanted for the purposes of the trade or business after the termination of the war, or to any other special circumstances specified in regulations made by the Treasury, those Commissioners shall have power to allow such modifications of any of the provisions of that schedule as they think necessary in order to meet the particular case.

If the Commissioners refuse, on any such application, to allow any modification, or if the applicant is dissatisfied with any modification allowed, the applicant may require the Commissioners to refer the case to a Board of Referees, to be appointed for the purposes of this Part of this Act by the Treasury, and that Board shall consider any case so referred and have the same powers with respect thereto as the Commissioners have.

*41. Adjustments for increased or decreased capital.]—(1) Where*

capital has been increased during the accounting period, a deduction shall be made from the profits of the accounting period at the statutory percentage per annum on the amount by which the capital has been increased, for the whole accounting period if the increased capital has been employed for the whole accounting period, and if the increased capital has been employed for part only of the accounting period, for that part of the accounting period.

(2) Where capital has been decreased during the accounting period, an addition shall be made to the profits of the accounting period at the statutory percentage per annum on the amount by which the capital has been so decreased, for the whole accounting period, if the capital has been decreased for the whole accounting period, and if the capital has been decreased for part only of the accounting period, for that part of the accounting period.

(3) For the purposes of this section capital shall be taken to be increased or decreased, as the case may be, where the pre-war standard of profits is a profits standard, if the capital employed in the trade or business exceeds or is less than the average amount of capital employed during the pre-war trade years or year by reference to which the profits standard has been arrived at, and, where the pre-war standard of profits is a percentage standard, if the capital exceeds or is less than the capital on which the percentage standard has been calculated.

(4) Where any capital employed in a trade or business which was so employed for the first time within three years before the first day of August nineteen hundred and fourteen has only commenced to be remunerative or fully remunerative in the accounting period, an amount equal to the statutory percentage, or where interest has been earned on the capital, but at a rate less than the statutory percentage, an amount which would bring the interest earned on the capital up to the statutory percentage, as the case may be, shall be added to the profits standard.

**42. Reference to the Board of Referees of questions as to increase of percentages, &c.]**—Where an application is made to the Commissioners of Inland Revenue—

(1) For an increase of the statutory percentage as respects any class of trade or business, or for a calculation of the percentage standard in the case of any class of trade or business in which the amount of capital actually employed in the trade or business is, owing to the nature

of the trade or business, small compared with the capital necessarily at stake for that trade or business, by reference to some factor other than the capital of the trade or business or to some additional factor; or

- (2) For an alteration of the pre-war standard of profits as respects capital employed for the purpose of the manufacture of war materials or for munitions work and which could not be expected to be remunerative or wholly remunerative, except in time of war, in a business which has been wholly or mainly carried on for those purposes; the Commissioners, unless they are of opinion that the application is frivolous or vexatious or relates to matters already decided by a Board of Referees, shall refer the case to a Board of Referees to be appointed for the purpose of this Part of this Act by the Treasury, and that Board shall deal with the case, and may, by order, if they think fit, increase the statutory percentage or alter the percentage standard for the class of trade or business the subject of the order, or alter the pre-war standard of profits, as the case requires.

On any such order being made, this Part of this Act shall have effect as from the date named in the order as if the percentage or standard named in the order was substituted for the percentage or standard fixed by this Act; and where, in pursuance of any such order, the statutory percentage is increased or the percentage standard is altered as respects any class of trade or business, the statutory percentage shall be increased and the percentage standard shall be altered respectively for all purposes of this Part of this Act as respects any trade or business belonging to that class.

This section shall apply to any subdivision of a trade or business based either on any special feature of the trade or business or on locality as it applies to a class of trade or business, in any case where the Board of Referees are of opinion that the sub-division can properly be dealt with separately.

- 43. Excess mineral rights duty.]—(1)* Where the amount payable to any person as rent in respect of the right to work minerals or of any mineral wayleaves (in cases where the right to work the minerals and the mineral wayleaves are not part of the assets of any trade or business) varies according to the price of the minerals, and the amount so payable in respect of any working year ending on any date after the commencement of the present

war (in this section referred to as the accounting year) exceeds the pre-war standard of that rent, there shall be paid as an addition to any mineral rights duty payable or paid, either directly or by deduction, by reference to the amount of the rent paid in that working year, by that person (in this section referred to as the person liable) an amount equal to fifty per cent. of that excess.

(2) The pre-war standard of rent shall, for the purposes of this section, be taken to be the average of any two of the three last pre-war rent values, to be selected by the taxpayer, and in cases where the minerals have not been worked or the wayleaves have not been let throughout the three years by reference to which the three last pre-war rent values are to be calculated, or for any other reason there are no proper data for ascertaining the pre-war rent values, shall be taken to be such amount as may be fixed by the Commissioners of Inland Revenue, having regard to the data afforded by the working and price of minerals in like circumstances, subject nevertheless to the same appeal as that to which the assessment of duty by the Commissioners is subject under Part I. of the Finance (1909-10) Act, 1910.

The pre-war rent value shall, as respects each of the three years immediately preceding the first accounting year, be taken to be the sum to which the rent for the accounting year would amount if the rent, so far as variable according to price, were based on the average prices governing the payment of the rent in that year.

(3) Any amount payable in any accounting year by the lessee of minerals or wayleaves to a superior lessor as rent in respect of the minerals or wayleaves shall be treated as a deduction from the amount payable to the lessee as rent for that year, and in computing the pre-war rent values a corresponding deduction shall be made on account of any such rent.

(4) Any increment value duty payable annually under section twenty-two of the Finance (1909-10) Act, 1910, shall, when paid, be treated as a deduction from the rent payable to any person in the year in which the duty is paid, and a corresponding deduction shall be made in computing the pre-war standard with which the rent for that year is to be compared.

(5) Any duty payable under this section shall be assessed by the Commissioners of Inland Revenue on the person liable, subject to the same appeal as that to which an assessment of duty by the

Commissioners under Part I. of the Finance (1909-10) Act, 1910, is subject, and shall be recoverable as a debt due to His Majesty from that person.

(6) Subsection (3) of section twenty of the Finance (1909-10) Act, 1910, shall extend so as to authorise particulars to be required of any lease of minerals or wayleaves and as to the sums paid or payable thereunder, and of such other particulars as to the minerals or wayleaves as the Commissioners may require for the purpose of this section.

(7) Expressions to which a special meaning is attached by Part I. of the Finance (1909-10) Act, 1910, shall have the same meaning in this section.

*44. Returns for purpose of Part III. and penalty for fictitious transactions.]—(1)* The Commissioners of Inland Revenue may, for the purposes of this Part of this Act, require any person engaged in any trade or business to which this Part of this Act applies, or who was so engaged during any accounting period or pre-war trade year, to furnish them within two months after the requirement for the return is made, with returns of the profits of the trade or business during the accounting period or pre-war trade years and such other particulars in connection with the trade or business as the Commissioners may require.

(2) It shall be the duty of every person chargeable to excess profits duty under this Part of this Act to give notice that he is chargeable to the Commissioners of Inland Revenue before the thirty-first day of January nineteen hundred and sixteen, and it shall be the duty of the liquidator of every company which is being wound up at the time of the commencement of this Act or is wound up after the commencement of this Act, and is chargeable to excess profits duty, to give notice of the fact to the Commissioners of Inland Revenue.

If any person fails to furnish a proper return in accordance with this section or to comply with any requirement of the Commissioners under this section, or to give any notice required by this section, he shall be liable on summary conviction to a fine not exceeding one hundred pounds and to a further fine not exceeding ten pounds a day for every day during which the offence continues after conviction therefor.

(3) A person shall not, for the purpose of avoiding the payment of excess profits duty, enter into any fictitious or artificial

transaction or carry out any fictitious or artificial operation, and, if he has entered into any such transaction or carried out any such operation before the commencement of this Act, shall inform the Commissioners of Inland Revenue of the nature of the transaction or operation.

If any person acts in contravention of, or fails to comply with, this provision, he shall be liable on summary conviction to a fine not exceeding one hundred pounds.

**45. Supplemental provisions as to excess profits duty.]**—(1) The excess profits duty shall be assessed by the Commissioners of Inland Revenue, and shall be payable at any time, not being less than two months, after it is assessed.

The Commissioners may, in any case where they think fit, allow the duty to be paid in instalments of such amount payable at such times as the Commissioners direct.

(2) The duty may be assessed on any person for the time being owning or carrying on the trade or business or acting as agent for that person in carrying on the trade or business, or, where a trade or business has ceased, on the person who owned or carried on the trade or business or acted as agent in carrying on the trade or business immediately before the time at which the trade or business ceased, and where there has been a change of ownership of the trade or business, the Commissioners of Inland Revenue may, if they think fit, take the accounting period as the period ending on the date on which the ownership has so changed and assess the duty on the person who owned or carried on the trade or business or acted as agent for the person carrying on the trade or business at that date.

(3) The amount of duty payable shall be recoverable as a debt due to his Majesty from the person on whom it is assessed.

Any such amount shall if it is less than fifty pounds be recoverable also summarily as a civil debt.

(4) Where a company is wound up after the commencement of this Act, and before the first day of July, nineteen hundred and sixteen, and the company would be chargeable with excess profits duty if the provisions of this Act were continued and extended to accounting periods ending before the first day of July, nineteen hundred and sixteen, it shall be the duty of the liquidator of the company to give notice to the Commissioners of Inland Revenue, and to set aside such sum out of the assets of

the Company as appears to the Commissioners of Inland Revenue to be sufficient to provide for any such excess profits duty as may become chargeable.

(5) Any person who is dissatisfied with the amount of any assessment made upon him by the Commissioners of Inland Revenue under this Part of this Act may (except in cases where a special right of appeal is given under this Part of this Act) appeal to the general Commissioners for the division in which he is assessed, or to the special Commissioners, and those Commissioners shall have power on any appeal, if they think fit, to summon witnesses and examine them upon oath.

The power under sections twenty-one and twenty-two of the Income Tax Act, 1853, to require an appeal in Ireland to the special Commissioners to be reheard by the county court judge, or chairman of quarter sessions, or recorder, shall apply to an appeal in Ireland under this provision.

Section fifty-nine of the Taxes Management Act, 1880 (which relates to the statement of a case on a point of law), shall apply with the necessary modifications in the case of any appeal to the general or special Commissioners under this section, or of the rehearing of any such appeal in Ireland, and in the case of a reference to the Board of Referees under this Part of this Act, as it applies in the case of appeals to the general or special Commissioners under the Income Tax Acts.

(6) The duty assessed by the Commissioners of Inland Revenue shall be payable notwithstanding any appeal under this section except in cases where the Commissioners of Inland Revenue direct to the contrary, but the Commissioners shall make such repayments, if any, as are necessary to give effect to any decision on appeal as soon as possible after such decision has been given.

(7) The Commissioners of Inland Revenue may make regulations with respect to the assessment and collection of the excess profits duty and the hearing of appeals under this section, and may by those regulations apply and adapt any enactments relating to the assessment and collection of income tax, or the hearing of appeals as to income tax by the general or special Commissioners, which do not otherwise apply.

(8) All Commissioners and other persons employed for any purpose in connection with the assessment or collection of excess profits duty shall be subject to the same obligations as to secrecy

with respect to excess profits duty as those persons are subject to with respect to income tax, and any oath taken by any such person as to secrecy with respect to income tax shall be deemed to extend also to secrecy with respect to excess profits duty.

#### FOURTH SCHEDULE.

##### PART I.—COMPUTATION OF PROFITS.

1. The profits shall be taken to be the actual profits arising in the accounting period; and the principle of computing profits by reference to any other year or an average of years shall not be followed.

2. The principle of the Income Tax Acts under which deductions are not allowed for interest on money borrowed for the purpose of the trade or business, or for rent, or royalties, or for other payments income tax on which is collected at the source (not being payments of dividends or payments for the distribution of profits), and under which profits or gains arising from lands, tenements, or hereditaments forming part of the assets of the trade or business are excluded shall not be followed.

3. Deductions for wear and tear or for any expenditure of a capital nature for renewals, or for the development of the trade or business or otherwise in respect of the trade or business, shall not be allowed except such as may be allowed under the Income Tax Acts, and if allowed shall be only of such amount as appears to the Commissioners of Inland Revenue to be reasonably and properly attributable to the year or accounting period.

4. Deductions shall not be allowed on account of the liability to pay, or the payment of, income tax or excess profits duty, but a deduction shall be allowed (if not otherwise allowed by means of the adoption of the principle of the Income Tax Acts) for any sum which has been paid in respect of the profits on account of any excess profits duty or similar duty imposed in any country outside the United Kingdom.

5. Any deduction allowed for the remuneration of directors, managers, and persons concerned in the management of the trade or business shall not, unless the Commissioners of Inland Revenue, owing to any special circumstances or to the fact that the remuneration of any managers or managing directors depends on the profits of the trade or business, otherwise direct, exceed the sums

allowed for those purposes in the last pre-war trade year or a proportionate part thereof as the case requires, and no deduction shall be allowed in respect of any transaction or operation of any nature, where it appears, or to the extent to which it appears, that the transaction or operation has artificially reduced the amount to be taken as the amount of the profits of the trade or business for the purposes of this Act.

6. Where any company, either in its own name or that of a nominee, owns the whole of the ordinary capital of any other company carrying on the same trade or business or so much of that capital as under the general law a single shareholder can legally own, the provisions of Part III. of this Act as to excess profits duty and the pre-war standard of profits shall apply as if that other company were a branch of the first-named company, and the profits of the two companies shall not be separately assessed.

7. Where in the case of any trade or business—

- (a) the percentage standard is adopted as the pre-war standard of profits; and
- (b) the net result of the trade or business during the three last pre-war trade years has shown a loss; and
- (c) any part of the profits has been applied in extinction of that loss;

then in estimating the profits a deduction shall be allowed equal to the amount of profits so applied.

8. In estimating the profits no account shall be taken of income received from investments except in the case of life assurance businesses and businesses where the principal business consists of the making of investments. Where account is taken of any such income—

- (a) any variation in the value of any of those investments which appears to the Commissioners of Inland Revenue not to be due to a variation in profits shall also be taken into account; and
- (b) where the income has been derived from profits in respect of which any payment or repayment of excess profits duty has been made under this Act, such deduction or addition shall be made in computing the profits as will make proper allowance for that payment or repayment of duty.

9. In computing the total profits of a local authority from any trades or businesses carried on by that authority the total amount which is required to be raised by them, out of the rates or otherwise, for sinking fund purposes in connection with those trades or businesses shall be allowed as a deduction.

10. In the case of societies registered under the Industrial and Provident Societies Acts the excess profits duty shall be charged on the sum by which the profits per member for the accounting period (including any surplus arising from transactions with members) exceed the like profits per member in the pre-war trade year or average of years taken as the basis of computation for the purpose of the pre-war standard of profits, multiplied by the number of members in the accounting period.

11. In the case of any contract extending beyond one accounting period from the date of its commencement to the completion thereof and only partially performed in any accounting period there shall (unless the Commissioners of Inland Revenue, owing to any special circumstances, otherwise direct) be attributed to each of the accounting periods in which such contract was partially performed, such proportion of the entire profits or loss or estimated profits or loss in respect of the complete performance of the contract as shall be properly attributable to such accounting periods respectively, having regard to the extent to which the contract was performed in such periods.

## PART II.—PRE-WAR STANDARD.

1. The profits of any pre-war trade year shall be computed on the same principles and subject to the same provisions as the profits of the accounting period are computed.

2. Where the accounting period for which the excess profits duty is to be assessed is less than a year, the amount of the pre-war standard of profits shall be proportionately reduced.

3. Where it is shown to the satisfaction of the Commissioners of Inland Revenue in the case of any trade or business that the three last pre-war trade years have been years of abnormal depression, any four of the last six pre-war trade years may be substituted for the purposes of the pre-war standard of profits for any two of the three last pre-war trade years.

The three last pre-war trade years shall not be considered as

years of abnormal depression unless the average profits of those years have been at least twenty-five per cent. lower than the average profits of the preceding three years.

4. Where owing to the recent commencement of a trade or business there have not been three pre-war trade years, but there have been two pre-war trade years, the pre-war standard of profits shall be taken to be the amount of the profits arising from the trade or business on the average of those two years or, at the option of the taxpayer, the profits arising from the trade or business during the last of those two years, and where there have not been two pre-war trade years, but there has been one pre-war trade year, the pre-war standard of profits shall be taken to be the profits arising from the trade or business during that year; and where there has not been one pre-war trade year, the pre-war standard of profits shall be taken to be the statutory percentage on the average amount of capital employed in the trade or business during the accounting period.

Where the trade or business is an agency or business of a nature involving capital of a comparatively small amount, the pre-war standard of profits shall be computed by reference to the profits arising from any trade, business, office, employment or profession of any sort, whether liable to excess profits duty or not, carried on by the agent or other person before his new trade or business commenced as if it was the same trade or business; but only to the extent to which the income from the former trade, business, office, employment or profession has been diminished.

5. Where since the commencement of the three last pre-war trade years a trade or business has changed ownership, the provisions of this Part of this Schedule shall apply as if a new trade or business had been commenced on the change of ownership, except in cases when the taxpayer makes an application that the provisions of Part III. of this Act and this Schedule should apply as if the trade or business had not changed ownership, but in that case such modifications (if any) shall be made in the application of this Schedule as may be necessary to make the basis on which the profits standard is computed the same as that on which the profits of the accounting period are computed.

6. It is hereby declared that, where any business or trade is confined to the management of any particular assets, but power exists to substitute other assets for those particular assets or any

of them, such a substitution shall not be deemed, for the purposes of Part III. of this Act, to constitute a change of ownership of the business; but, where any such substitution has been carried out by the sale of assets and the purchase of other assets, the capital of the trade or business shall be taken to be increased or decreased, as the case may be, only by the amount of the difference between the price of the assets purchased and the price obtained for the assets sold, and the capital representing the assets purchased shall be estimated on the same basis for all the purposes of Part III. of this Act.

### PART III.—CAPITAL.

1. The amount of the capital of a trade or business shall, so far as it does not consist of money, be taken to be—

- (a) so far as it consists of assets acquired by purchase, the price at which those assets were acquired, subject to any proper deductions for wear and tear or replacement, or for unpaid purchase money; and
- (b) so far as it consists of assets being debts due to the trade or business, the nominal amount of those debts subject to any reduction which has been allowed in respect of those debts for income tax purposes; and
- (c) so far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets of the trade or business, subject to any proper deductions for wear and tear or replacement.

Nothing in this Part of this Schedule shall prevent accumulated profits employed in the business being treated as capital.

2. Any capital the income on which is not taken into account for the purposes of Part I. of this Schedule, and any borrowed money or debts, shall be deducted in computing the amount of capital for the purposes of Part III. of this Act.

3. Where any asset has been paid for otherwise than in cash, the cost price of that asset shall be taken to be the value of the consideration at the time the asset was acquired, but where a trade or business has been converted into a company and the shares in the company are wholly or mainly held by the person who was owner of the trade or business, no value shall be attached

to those shares so far as they are represented by goodwill or otherwise than by material assets of the company unless the Commissioners of Inland Revenue in special circumstances otherwise direct. Patents and secret processes shall be deemed to be material assets.

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## STATUTORY RULES AND ORDERS, 1916.

### No. 1.



#### EXCESS PROFITS DUTY.

REGULATIONS, DATED JANUARY 6, 1916, PRESCRIBED BY THE COMMISSIONERS OF INLAND REVENUE UNDER SECTION 45 (7), OF THE FINANCE (No. 2) ACT, 1915 (5 & 6 GEO. 5, c. 89).

1. Subject to the express provisions of the Act and these regulations, the sections of the Income Tax Acts enumerated in the schedule to these regulations shall, with the modifications therein described, apply to the assessment and collection of excess profits duty and the hearing of appeals in connection therewith.

2. If in any case any person required by law to make a return fails to do so, or if the return made by him appears to the Commissioners of Inland Revenue to be incorrect or insufficient, the Commissioners may, without prejudice to the enforcement of any penalty which may have been incurred, make an assessment of excess profits duty according to the best of their judgment.

3. Notice of an assessment shall be served on the person charged or on the person in whose name he is charged.

4. A notice of assessment under the Act may be delivered to the person on whom it is intended to be served, or served upon him by post.

Service by post in this regulation shall have the same meaning as in the Interpretation Act, 1889.

5. Any person dissatisfied with the amount of any assessment made upon him may at any time within thirty days from the date of the service of notice of assessment, or within such further time as the Commissioners of Inland Revenue may allow, give notice to

the Surveyor of Taxes named in the notice of assessment of his intention to appeal against the amount of the assessment, and every such notice shall specify the grounds of appeal, and, in England, Scotland and Wales, whether the appellant desires that the appeal shall be heard by the General Commissioners or the Special Commissioners.

6. With reference to any notice of appeal and to the hearing of an appeal, the General or Special Commissioners, as the case may be, shall, subject to the provisions of the Act, and to any regulations made thereunder, have all such powers in relation to any matter of appeal as are possessed by them in relation to notices of appeal and the hearing of appeals under any Act for the time being in force relating to income tax. The General or Special Commissioners shall certify in writing to the appellant and to the Commissioners of Inland Revenue after determining any appeal their decision and the amount, if any, by which any assessment has been thereby altered.

7. The Commissioners of Inland Revenue may be represented on the hearing of an appeal by any person nominated in that behalf by them, and any person so nominated shall have the same powers with reference to appeals as may for the time being be exercised by a Surveyor of Taxes with reference to appeals relating to income tax.

8. A Surveyor of Taxes may for any purpose in connection with the assessment and collection of the duty and the hearing of appeals make use of or produce in evidence any returns, correspondence, schedules, accounts, statements, or other documents to which he has had or may have lawful access for the purposes of income tax, and shall have the same right to examine all accounts, schedules and statements furnished to the General or Special Commissioners as he has in the case of appeals relating to income tax.

9. Any barrister or solicitor or member of an incorporated society of accountants may be heard by the General or Special Commissioners on an appeal.

10. No Commissioner interested in his own right, or in the right of any other person, in any matter under appeal shall take part in or be present at the hearing or determination thereof.

11. The Commissioners of Inland Revenue may make additional assessments in any case where they deem it necessary at any time within three years from the date of the first assessment:

Provided that no such additional assessment shall be made in any case where an assessment has been reduced by the General or Special Commissioners upon an appeal or by any Court by which an appeal has been re-heard.

12. Any notices required to be given to the Commissioners of Inland Revenue may be given either to the Commissioners at their principal office in London, or to the Surveyor of Taxes acting for the district in which the person giving such notice resides or carries on business.

13. In these regulations, unless the context otherwise requires, the expression "Surveyor of Taxes" means a surveyor as defined by the Taxes Management Act, 1880, and "the Act" means the Finance (No. 2) Act, 1915.

By order of the Commissioners of Inland Revenue,

*P. Thompson,*  
Secretary.

6th January, 1916.

#### SCHEDULE.

*Income Tax Act, 1842 (5 & 6 Vict. c. 35):—*

Section 40.

- „ 41, save in so far as it relates to a married woman.
- „ 44.
- „ 51, save in so far as it relates to a married woman.
- „ 100, Schedule D, rules applying to the first and second cases of that schedule, rule 3, down to and including the words "and no separate statement shall be allowed in any case of partnership."

*Taxes Management Act, 1880 (43 & 44 Vict. c. 19):—*

Section 15, sub-sections (2) and (5).

- „ 55, down to and including the words "the several particulars on which the charge is made."

*Finance Act, 1907 (7 Edw. 7, c. 13):—*

Section 22, sub-section (2).

*Finance Act, 1914 (4 & 5 Geo. 5, c. 10):—*

Section 10, sub-section (2).

*Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89):—*

Section 31.

## FINANCE ACT, 1916.

(6 &amp; 7 Geo. 5, c. 24.)

## PART III.

## EXCESS PROFITS DUTY.

**45. Continuance and increase of rate of excess profits duty.]—**(1) The Finance (No. 2) Act, 1915 (in this Part of this Act referred to as the principal Act), shall, so far as it relates to excess profits duty, apply, unless Parliament otherwise determines, to any accounting period ending on or after the first day of July nineteen hundred and fifteen and before the first day of August nineteen hundred and seventeen, as it applies to accounting periods ended after the fourth day of August nineteen hundred and fourteen and before the said first day of July.

(2) Section thirty-eight of the principal Act shall, as respects excess profits arising in any accounting period beginning after the expiration of a year from the commencement of the first accounting period, have effect as if sixty per cent. of the excess were substituted as the rate of duty for fifty per cent. of the excess.

Where part of an accounting period is after and part before the date of the expiration of a year from the commencement of the first accounting period, the total excess profits and any deficiencies or losses arising in the accounting period shall be apportioned between the time up to and including, and the time after, that date in proportion to the length of those times respectively, and the rate attributable to the time after and the time before and including that date shall respectively be sixty and fifty per cent. of the excess.

In the case of trades or businesses commencing after the fourth day of August nineteen hundred and fourteen, the rate of duty shall be sixty per cent. of the excess in respect of any accounting period ending after the fourth day of August nineteen hundred and fifteen.

In calculating any repayment or set off under sub-section (3) of section thirty-eight of the principal Act any amount to be repaid or set off on account of a deficiency or loss arising in any

period in respect of which duty would be payable at the rate of fifty per cent. of the excess, shall be calculated by reference to that rate of duty.

Any additional duty payable by virtue of this section in respect of a past accounting period may be assessed and recovered notwithstanding that duty has already been assessed in respect of that period.

(3) It shall be the duty of every person chargeable to excess profits duty under Part III. of the principal Act, as extended by this Act, if he has not previously given notice of his liability to be charged with excess profits duty in respect of any accounting period, to give notice to the Commissioners of Inland Revenue before the expiration of two months after the termination of any accounting period in respect of which he is chargeable, or, if the accounting period terminated before the passing of this Act, within one month after the passing of this Act.

If any person fails to give the notice required by this provision he shall be liable on summary conviction to a fine not exceeding one hundred pounds, and to a further fine not exceeding ten pounds a day for every day during which the offence continues after conviction therefor.

**46. Increase of rate of excess mineral rights duty.]**—(1) Section forty-three of the principal Act (which relates to excess mineral rights duty) shall have effect as if sixty per cent. of the excess were substituted as the rate of duty for fifty per cent. of the excess, in the case of minerals which have become subject to a mining lease after the fourth day of August nineteen hundred and fourteen for all accounting years, and in the case of other minerals for any accounting year ending after the completion of the first accounting year, and any additional duty may be recovered accordingly.

(2) It is hereby declared that the words in subsection (1) of section forty-three of the principal Act "assets of any trade or business" refer only to assets of the trade or business of the person receiving the rent for the right to work the minerals or for the mineral wayleaves.

**47. Computation of excess profits duty in case of sale of ships.]**—Where any ship has been sold since the fourth day of August nineteen hundred and fourteen, in such circumstances that the profits of the sale are not the profits of a trade or business, the

following special provisions shall, if the Commissioners of Inland Revenue so require, be applied in the computation of the liability to excess profits duty in respect of the profits arising from the use of the ship:—

- (a) The pre-war standard of profits of the purchaser as respects the ship shall, where the standard of the trade or business of the vendor is a profits standard, be calculated by reference to the profits arising from the use of the ship during the pre-war trade years, and shall be ascertained in accordance with the provisions of the principal Act, but calculated, where necessary, as if the use of the ship were a separate business; and where that standard is a percentage standard the pre-war standard of profits as respects the ship shall be the same as if the ship had not been sold, or, in the case of a ship which was used for the first time after the fourth day of August, nineteen hundred and fourteen, shall be calculated by reference to the capital represented by the ship at the date when it was first used; and the pre-war standard of profits of the trade or business of the vendor and of the purchaser shall respectively be reduced and increased as the case may require, with any adjustments which may be necessary to meet the case of borrowed money or unpaid purchase money or other similar matters:
- (b) For the purpose of estimating separately the profits arising from the use of the ship, an apportionment shall, where necessary, be made of the total profits of the trade or business in which the ship has been used, regard being had to the earnings of the ship as compared with the earnings of the other assets employed in the trade or business:

Any appeal under subsection (5) of section forty-five of the principal Act, so far as it involves any question of an apportionment under this provision, shall be to the Special Commissioners:
- (c) The power to require returns under subsection (1) of section forty-four of the principal Act shall include power for the Commissioners of Inland Revenue to require any vendor of the ship to give such information to them and

to the purchaser as the Commissioners think necessary in order to enable the provisions of this section to be carried into effect:

- (d) Nothing in subsection (3) of section forty of the principal Act or in paragraph 3 of Part I. of the Fourth Schedule to the principal Act shall operate so as to enable the purchaser of the ship to obtain any greater relief than could have been obtained by the vendor if the ship had not been sold, other than relief in connection with expenditure by the purchaser on improvements or repairs;
- (e) In the application of section forty-one of the principal Act to any trade or business whose pre-war standard of profits has been determined or adjusted under this section any increase or decrease of capital attributable to the purchase or sale of the ship shall be disregarded, and where any such determination or adjustment has taken place both in respect of the sale of a ship and the purchase of another ship for the same trade or business, paragraph 6 of Part II. of the Fourth Schedule to the principal Act shall not apply.

*48. Adjustment of excess profits duty and munitions Exchequer payments in case of controlled establishments.]*—(1) The Commissioners of Inland Revenue may treat any sums actually paid in respect of munitions Exchequer payments, which appear to the Commissioners to be attributable to the same period and subject matter as that for which excess profits duty is to be paid, as a payment on account of excess profits duty, or, if the amount of the munitions Exchequer payments is larger than the amount payable as excess profits duty, as extinguishing the duty for the purposes of collection; and may arrange with the Minister of Munitions, if in any case excess profits duty is paid before the munitions Exchequer payment, for the deduction of excess profits duty payments from any sums to be collected in respect of munitions Exchequer payments which appear to the Commissioners to be attributable to the same period and subject matter as that for which the excess profits duty payments have been made, or, if the amount of the excess profits duty payments is greater than the amount to be collected on account of munitions Exchequer payments, for the extinction of the amount to be so collected.

For the purpose of determining the period to which any profits

are to be attributed under this section, profits shall be deemed to accrue from day to day at a uniform rate.

(2) Any excess profits duty and any munitions Exchequer payments which are remitted under this section for the purpose of collection shall not be deemed to have been paid for the purposes of section thirty-five of the principal Act (which relates to computation of profits and gains in relation to excess profits duty) as extended by this Act.

(3) Deductions shall not be allowed on account of munitions Exchequer payments in computing profits for the purpose of excess profits duty.

**49. Provisions as to directors' fees.]**—(1) Where the pre-war standard of profits is taken to be the percentage standard or is calculated by reference to the statutory percentage in the case of any trade or business owned or carried on by a company or other body corporate whose directors have a controlling interest, the Commissioners of Inland Revenue may, if they think fit, as respects any accounting period, including a past accounting period, for the purpose of the provisions relating to the statutory percentage and for the purpose of the determination and computation of profits under Part I. of the Fourth Schedule to the principal Act, treat the company or body corporate as if it were a firm and not a company or body corporate and the directors or any of them as if they were partners in the firm.

(2) If as respects any accounting period ending on or after the first day of July nineteen hundred and fifteen, the Commissioners of Inland Revenue refuse to allow a deduction in respect of any increase in the remuneration of directors of any trade or business, and the taxpayer is required to pay excess profits duty in respect of the disallowed deduction, the taxpayer shall be entitled to recover from any such director the amount which the taxpayer has paid by way of excess profits duty in respect of the increase; but any amount so recovered shall, unless the Commissioners otherwise direct, be treated as excess profits duty paid by the director from whom it is recovered and not as excess profits duty paid by the taxpayer.

(3) In this section, the expression "directors" includes any managers or persons concerned in the management of the trade or business who are remunerated out of the funds of the trade or business.

**50. Further provision as to profits applied in extinction of previous losses.]**—Paragraph 7 of Part I. of the Fourth Schedule of the principal Act (which allows deductions to be made in respect of profits applied in extinction of losses) shall apply to a case where the capital account of any trade or business shows a debit balance as it applies to a case where the percentage standard is adopted as the pre-war standard of profits.

**51. Provision as to accounting period.]**—It is hereby declared that, for the purpose of subsection (2) of section thirty-eight of the principal Act, any period for which the books of a trade or business have been actually made up for any interim or other purpose in such a manner that the profits for that period can be readily ascertained is (without prejudice to the powers of the Commissioners of Inland Revenue under that provision) to be taken as an accounting period, notwithstanding that under the articles of association of the company carrying on the trade or business or under any other regulations affecting the carrying on of the trade or business the accounts are also required to be made up for some other period, and notwithstanding that such accounts are not issued.

**52. Provision as to accumulating profits.]**—It is hereby declared that, for the purpose of excess profits duty, profits of any trade or business arising and accumulating during any accounting period are not, during that period, to be treated as accumulated profits within the meaning of Part III. of the Fourth Schedule to the principal Act, or as capital employed in the trade or business.

**53. Application of section 35 of the Finance (No. 2) Act, 1915, to munitions Exchequer payments.]**—Section thirty-five of the principal Act (which relates to the computation of profits and gains for the purpose of income tax in relation to excess profits duty) shall apply to sums actually paid in respect of munitions Exchequer payments as it applies to excess profits duty, except that the relief to the taxpayer under subsection (2) of that section shall in all cases be given by means of repayment and not by deduction.

**54. Deposit of sums for payment of excess profits duty.]**—Any person may deposit with the Commissioners of Inland Revenue any sums for the purpose of satisfying any excess profits duty which may thereafter become payable by him; and sums so de-

posed shall be applied in payment of any such duty as and when it becomes payable.

In calculating the amount to be so applied in payment of duty interest shall be allowed at such rate as may for the time being be determined by the Treasury.

**55. Amendment of section 40 (3) of the principal Act.]**—Sub-section (3) of section forty of the principal Act (which provides amongst other things for the reference of certain matters for the decision of a board of referees) shall, where the application for such a reference is made in respect of a trade or business carried on in a controlled establishment within the meaning of Part II. of the Munitions of War Act, 1915, and relates to an accounting period during any part of which the establishment has been so controlled, and to the postponement or suspension of renewals or repairs, or to exceptional depreciation or obsolescence of assets, or to the necessity in connexion with the present war of providing plant, have effect as though a referee or board of referees appointed or designated by the Minister of Munitions for the purpose were substituted for the board of referees under the principal Act.

**56. Exemption from excess profits duty of businesses carried on under the Court.]**—In the case of any trade or business which by reason of its being unable to pay its debenture holders or creditors is being carried on by a liquidator, receiver, or trustee under the Court, no excess profits duty shall be levied or paid until provision has been made for payment of such unpaid debenture holders or creditors.

**57. Definition.]**—In this Part of this Act the expression “munitions Exchequer payments” means any sums paid into the Exchequer under section four of the Munitions of War Act, 1915, on account of the excess of the net profits of a controlled establishment.

\* \* \* . \* \* \*

**69. Part III. of this Act shall be construed together with Part III. of the Finance (No. 2) Act, 1915.**

## MUNITIONS OF WAR (AMENDMENT) ACT, 1916.

(5 &amp; 6 Geo. 5, c. 99.)

**11. Amendment of section four of principal Act.]**—Subsection (2) of section four of the principal Act shall be read as if the words “or to any agreement existing before the establishment became a controlled establishment, between the owner of the establishment and an employee with regard to any periodical increase of remuneration” were inserted after the words “nineteen hundred and fifteen.”

**19. Minor amendments of principal Act.]**—In subsection (3) of section five of the principal Act, after the words “affords no standard of comparison” there shall be inserted the words “or that no such average exists,” and after the words “if he thinks just, allow,” there shall be inserted the words “or require.” \* \* \*

**23. Exclusion of Arbitration Act, 1889.]**—The Arbitration Act, 1889 (52 & 53 Vict. c. 49), shall not apply to any reference to any referee or board of referees under the principal Act or this Act or the rules made thereunder.

**24. Effect of revocation of orders.]**—Where the Minister of Munitions makes an order revoking any order previously made by him under section four of the principal Act, the order so revoked shall, if that order has not been in operation for more than three months and was made under a misapprehension and the revoking order so directs, be treated for all or any of the purposes thereof as if it had never had effect.

**25. Provision as to rules.]**—Rules and regulations made under the principal Act as amended by this Act shall not be deemed to be statutory rules within the meaning of section one of the Rules Publication Act, 1893 (56 & 57 Vict. c. 66).

## STATUTORY RULES AND ORDERS, 1918.

No. 559.

## MUNITIONS OF WAR.

## CONTROLLED ESTABLISHMENTS.

THE MUNITIONS (LIMITATION OF PROFITS) RULES, 1915 (AMENDMENT) RULES, 1917, DATED MARCH 30, 1917, MADE BY THE MINISTER OF MUNITIONS IN PURSUANCE OF SECTION 5 (4) OF THE MUNITIONS OF WAR ACT, 1915 (5 & 6 GEO. 5, c. 54), WITH RESPECT TO THE LIMITATION OF PROFITS OF A CONTROLLED ESTABLISHMENT.

The Minister of Munitions, in pursuance of section 5, subsection (4) of the Munitions of War Act, 1915, hereby makes the following rules:—

1. These rules may be cited as "The Munitions (Limitation of Profits) Rules, 1915 (Amendment) Rules, 1917," and the Munitions (Limitation of Profits) Rules, 1915 (in these rules referred to as "the principal rules"), as amended by these rules may be cited as "The Munitions (Limitation of Profits) Rules, 1915 and 1917."

2. Except as hereinafter provided, expressions to which meanings are assigned by the principal rules have in these rules the same respective meanings, and rule 3 of the principal rules shall apply with respect to these rules.

3. In and for the purposes of the principal rules as amended by these rules, the expression "standard amount of profits" shall, notwithstanding anything in the principal rules, mean the average of the amount of the net profits of a controlled establishment for the standard period ascertained or determined in accordance with the Act and the principal rules or any amount substituted for such average pursuant to section 5 (3) of the Act, as amended by section 19 of the Munitions of War (Amendment) Act, 1916, or a proportionate part of such average or amount as the case may require.

4. Rule 10 of the principal rules shall be read and have effect as if the following provisions had been contained therein in lieu of the provisions of paragraph (ii) thereof (that is to say):—

“The Minister shall, when delivering to the controlled owner notice of the amount at which the Minister is prepared to agree the net profits for any period of assessment to which this rule applies, state the sum which the Minister has decided shall be added under this rule to the standard amount of profits, and in cases where such sum is in respect of any additional volume of output the measure of output in terms of which the Minister has computed such additional volume.

“The controlled owner may within fourteen days after delivery to him of notice of the amount at which the Minister is prepared to agree such net profits serve notice on the Minister that he objects to the sum which the Minister has decided is to be added under this rule to the standard amount of profits on the ground that the amount which the Minister has taken to be the amount of the additional average capital is less than the actual amount, or that some other measure of output should have been adopted for computing the volume of such additional output, and if the Minister and the controlled owner are unable to agree upon the amount of additional average capital or the measure of output in terms of which the additional volume of output should be computed, the matter in difference shall be remitted by the Minister to the referee for determination. The amount of any additional average capital or the measure of output in terms of which any additional volume of output is to be computed as determined by the referee may be such as to result in the addition to the standard amount of profits of a greater or less sum than the sum which the Minister decided was to be added thereto.”

5. These rules shall come into force on the 30th day of March, 1917.

*Edmund Phipps,*  
General Secretary.

## STATUTORY RULES AND ORDERS, 1917.

No. 399.



## EXCESS PROFITS DUTY.

REGULATION, DATED APRIL 26, 1917, MADE BY THE TREASURY UNDER SECTION 40 (3) OF THE FINANCE (NO. 2) ACT, 1915 (5 & 6 GEO. 5, c. 89).

The Lords Commissioners of His Majesty's Treasury in pursuance of the powers conferred upon them by section 40 (3) of the Finance (No. 2) Act, 1915, hereby make the following regulation:—

The Commissioners of Inland Revenue shall in addition to the powers conferred upon them by section 40 (3) of the Finance (No. 2) Act, 1915, have power in any case to allow modification of the provisions of the Fourth Schedule to the above-named Act, owing to depreciation through effluxion of time of any capital which is employed in the trade or business, and which is expended upon and consists of patent rights, so far as such depreciation is not offset by goodwill arising from the user of, or interest in, such rights.

This regulation shall have effect as from the commencement of the above-named Act.

*J. W. Pratt.*

*J. Towyn Jones.*

Treasury Chambers.

26th April, 1917.

## FINANCE ACT, 1917.

(7 &amp; 8 Geo. 5, c. 31.)

## PART III.

## EXCESS PROFITS DUTY.

**20. Continuance and increase of rate of excess profits duty.**

(1) The Finance (No. 2) Act, 1915 (in this Part of this Act referred to as the principal Act), shall, so far as it relates to excess profits duty, apply, unless Parliament otherwise determines, to any accounting period ending on or after the first day of August nineteen hundred and seventeen and before the first day of August nineteen hundred and eighteen, as it applies to accounting periods ended after the fourth day of August nineteen hundred and fourteen and before the first day of August nineteen hundred and seventeen.

(2) Section thirty-eight of the principal Act shall, as respects excess profits arising in any accounting period commencing on or after the first day of January nineteen hundred and seventeen, have effect as if eighty per cent. of the excess were substituted as the rate of duty for sixty per cent. of the excess, or, in the case of an accounting period which commenced before that date but ends after that date, as if eighty per cent. were substituted for sixty per cent. as respects so much of the excess as may be apportioned under this Act to the part commencing on that date.

In calculating any repayment or set off under subsection (3) of section thirty-eight of the principal Act any amount to be repaid or set off on account of a deficiency or loss arising in any accounting period commencing on or after the first day of January nineteen hundred and seventeen, or, in the case of an accounting period which has commenced before that date but ends after that date, on account of so much of the deficiency or loss as may be apportioned under this Act to the part commencing on that date, shall be calculated by reference to duty at the rate of eighty per cent.

Any additional duty payable by virtue of this section in respect of a past accounting period may be assessed and recovered notwithstanding that duty has already been assessed in respect of that period.

(3) It shall be the duty of every person chargeable to excess profits duty, if he has not previously given notice of his liability to be charged with excess profits duty in respect of any accounting period, to give notice to the Commissioners within two months after the termination of any accounting period in respect of which he is chargeable, or, if the accounting period terminated before the passing of this Act, within one month after the passing of this Act.

If any person fails to give the notice required by this provision he shall be liable on summary conviction to a fine not exceeding one hundred pounds, and to a further fine not exceeding ten pounds a day for every day during which the offence continues after conviction therefor.

**21. Increase of rate of excess mineral rights duty.**—Section forty-three of the principal Act (which relates to excess mineral rights duty) shall have effect as if eighty per cent. of the excess were substituted as the rate of duty for sixty per cent. for any accounting year commencing on or after the first day of January nineteen hundred and seventeen, or, in the case of an accounting year which commenced before that date but ends after that date, as if eighty per cent. were substituted for sixty per cent. as respects so much of the excess as may be apportioned under this Act to the part commencing on that date, and any additional duty may be recovered accordingly:

Provided that where it is shown to the satisfaction of the Commissioners that the amount payable as rent under any lease or agreement for a lease for any accounting year in respect of which or any part of which excess mineral rights duty is payable at the rate of eighty per cent. is not greater than the average amount payable as rent for the two pre-war years the prices in which are selected by the taxpayer for the purpose of determining the pre-war rent values of the rent for the accounting year, or would be reduced below that amount by the payment of excess mineral rights duty, no excess mineral rights duty or, as the case may be, such an amount of excess mineral rights duty only as will reduce the amount payable as rent for the accounting year to the said average amount, shall be paid for that accounting year.

**22. Special provisions as to deficiencies and losses of shipping concerns.]**—(1) In computing the excess profits duty of any trade or business which consists wholly or partly of the business of

shipping the provisions of subsection (3) of section thirty-eight of the principal Act (which relate to the repayment or setting off of duty on account of deficiencies or losses) shall not apply in relation to any deficiency or loss in any accounting period commencing on or after the first day of January nineteen hundred and seventeen, and in the case of an accounting period which has commenced before that date but ends after that date, shall not apply in relation to so much of the deficiency or loss as may be apportioned under this Act to the part commencing on that date:

Provided that—

- (a) where the shipping business is carried on merely as ancillary to the principal trade or business, the provisions of this section shall not apply;
  - (b) where the trade or business carried on does not consist wholly of shipping, and the part which does not consist of shipping is not merely ancillary to the business of shipping, such apportionment of any deficiency or loss shall be made by the Commissioners as may be necessary to limit the application of this section to such part of the business as consists of shipping; and
  - (c) if in any such accounting period as aforesaid there has been a loss or the profits have not reached the point which would have involved liability to excess profits duty if the percentage standard had been adopted, the same amount shall, as respects the deficiency or loss or so much thereof as is affected by this section, be repaid or set off under subsection (3) of the said section thirty-eight as would have been repaid or set off if the percentage standard had been adopted.
- (2) Any appeal under subsection (5) of section forty-five of the principal Act on any question arising under this section shall be to the Special Commissioners.
- (3) In this section the expression "business of shipping" means the business carried on by an owner of ships, and for the purposes of this definition the expression "owner" includes any charterer to whom a ship is demised.
- 23. Relief in respect of Colonial excess profits duty.]*—(1) His Majesty may by Order in Council declare—
- (a) that under the law in force in any of His Majesty's possessions excess profits duty is chargeable in respect of any

profits in respect of which excess profits duty is also payable in the United Kingdom; and

(b) that arrangements have been made with the Government of any such possession whereby, in respect of any profits, only the duty which is higher in amount is to be payable, and the amount of such duty is to be apportioned between the respective Exchequers in proportion to the amount of duty which would otherwise have been payable in the United Kingdom and in that possession respectively.

(2) Where any such Order in Council is made, then, if the Commissioners are satisfied that any case is one to which any such arrangements relate, they may, in lieu of any relief granted under paragraph 4 of Part I. of the Fourth Schedule to the principal Act, allow or make such remission or adjustments of duty as may be necessary to give effect to such arrangements, so, however, that the effect of such remission or adjustments shall not be less favourable than the relief in lieu of which they are allowed or made.

(3) The obligation as to secrecy imposed by subsection (8) of section forty-five of the principal Act shall not prevent the disclosure to the Government of the possession concerned of such facts as may be necessary to enable such arrangements as aforesaid to be carried into effect.

*24. Further provisions with respect to munitions Exchequer payments.]*—(1) The provisions of section four of the Munitions of War Act, 1915, with respect to munitions Exchequer payments shall not apply to any profits arising after the thirty-first day of December nineteen hundred and sixteen or apportioned under this Act to the period after that date.

(2) Munitions Exchequer payments arising on or before the thirty-first day of December nineteen hundred and sixteen, or apportioned under this Act to the period down to and including that date shall, after the passing of this Act, be assessed and collected, or, if already assessed but not collected, collected, by the Commissioners, and shall be computed by them in accordance with the provisions of that Act and the rules made thereunder, and the Commissioners shall for those purposes have all the powers of the Minister of Munitions, including the power of making rules.

For the purposes of such assessment and collection, the provisions for the time being in force with respect to the assessment and collection of excess profits duty (including provisions as to returns and penalties, but excluding provisions imposing any charge of duty or as to the computation of duty) shall apply, and rules may be made by the Commissioners accordingly, and the provisions of section forty-eight of the Finance Act, 1916, relating to the adjustment of excess profits duty and munitions Exchequer payments, shall apply subject to such modifications as may be necessary in consequence of the transfer of powers effected by this sub-section.

Any rules made by the Commissioners may specify matters which may be referred to the Minister, or to a referee or board of referees appointed by him, and prescribe the manner in which such cases are to be referred.

(3) For the purposes of subsection (3) of section five of the said Act, any establishments in which the same person has a controlling or preponderating interest may, if the Commissioners so determine, be treated as belonging to the same owner.

(4) Subsections (2) and (3) of section forty-nine of the Finance Act, 1916 (which relate to the recovery of payments in respect of increased directors' fees), shall apply for the purposes of munitions Exchequer payments as they apply for the purposes of excess profits duty, with the necessary modifications.

*25. Additional powers of reference to referees.]*—Notwithstanding anything contained in section forty-two of the principal Act (which provides for the reference to the Board of Referees of questions as to percentages, &c.) the Commissioners may, if they think fit, refer to the Board of Referees any application made under that section as respects a class of trade or business, although the application may relate to matters already decided by that Board, and the Board may, if they think fit, on cause being shown by additional evidence or otherwise, re-open the case and make any order which they could have made on an application relating to matters not already decided by them, and may revise any order previously made by them affecting that class of trade or business; and any such order or revised order shall, as from such date as may be specified therein, apply and have effect in lieu of any previous order relating to the same matter.

*26. Amendments of law as respects accounting periods ending*

*after December 31st, 1916.]—In the application of Part III. of the principal Act to excess profits duty for any accounting period ending after the thirty-first day of December nineteen hundred and sixteen, the following provisions shall have effect:—*

- (1) In ascertaining the deduction to be made from the profits of the accounting period in respect of increased capital, or the pre-war standard of profits in cases where there has not been one pre-war trade year, three per cent. shall be added to the statutory percentage per annum; and, accordingly, in subsection (1) of section forty-one of, and paragraph 4 of Part II. of the Fourth Schedule to, the principal Act, the expression “statutory percentage” shall be taken to mean the statutory percentage as so increased:
- (2) The statutory percentage shall, in the case of a trade or business not carried on or owned by a company or other body corporate, be taken to be eight per cent. instead of seven per cent.; and accordingly subsection (2) of section forty of the principal Act shall have effect as though eight per cent. were substituted for seven per cent.:

Provided that nothing in this provision shall affect the amount of the statutory percentage for the purposes of subsection (2) of section forty-one of the principal Act:

- (3) Any increase of the statutory percentage under this section shall be in addition to any increase of the statutory percentage which has, before the passing of this Act, been made under section forty-two of the principal Act:
- (4) Where the pre-war standard of profits of any trade or business does not exceed five hundred pounds, and the profits of the accounting period, after any adjustment in respect of increased or decreased capital, are less than two thousand pounds, subsection (1) of section thirty-eight of the principal Act shall have effect as though for two hundred pounds there were substituted two hundred pounds with the addition of one-fifth of the amount by which the profits of the accounting period are less than two thousand pounds; so, however, that if there has been a loss in the accounting period, then for the purpose of ascertaining the amount of any repayment or set-off under the principal Act the addition allowed shall be such as

if there had been neither loss nor profit, and that where the accounting period is a period of less than a year, this provision shall have effect as if there were substituted for two thousand pounds and two hundred pounds respectively a proportionately reduced amount:

The foregoing provision shall apply where the pre-war standard of profits exceeds five hundred pounds, subject to this qualification, that the amount of the addition shall be reduced by the amount by which the pre-war standard exceeds five hundred pounds:

(5) Where the Commissioners are satisfied—

(a) that in connection with any trade or business two or more distinct and independent industries are carried on in separate establishments, and with books kept in such a manner that the profits in respect of each industry can be readily ascertained; and

(b) that in any year by reference to which the pre-war standard of profits is calculated a loss has been sustained in respect of any one or more of such industries;

the Commissioners may, if they think fit, in computing the profits standard, disregard that loss:

(6) Where the Commissioners are satisfied that during the last six pre-war trade years, owing to trading losses—

(a) any former assets of any trade or business have ceased to form part of the assets of that trade or business; or

(b) the money borrowed in respect of the trade or business or the debts of the trade or business have increased;

the Commissioners shall, for the purpose of ascertaining the capital of the trade or business in any case where the percentage standard is adopted, compute the capital as though there had been no such loss of assets or increase of borrowed money or debts:

(7) Six years shall be substituted for three years in subsection (4) of section forty-one of the principal Act (which provides for the adjustment of excess profits duty in respect of unremunerative capital).

(8) The excess profits duty of a society registered under the

Industrial and Provident Societies Acts may, if the society so requires, instead of being computed as provided for by paragraph 10 of Part I. of the Fourth Schedule to the principal Act, be computed as follows:—

The amount of excess profits (if any) arising on commercial transactions with non-members shall be separately ascertained in accordance with the general principles of the principal Act, and there shall be added thereto the amount (if any) by which the profit or surplus arising from transactions with members per pound sterling of turnover in the accounting period exceeds the like profit or surplus in the pre-war trade year or average of years taken as the basis of computation for the purpose of the pre-war standard of profits in respect of such commercial transactions as aforesaid, multiplied by the number of pounds sterling of turnover in the accounting period; and excess profits duty shall be charged on the sum of those amounts:

Provided that the method of computation hereby laid down shall not be adopted for ascertaining the amount of any deficiency or loss for the purposes of subsection (3) of section thirty-eight of the principal Act, nor shall any duty computed under this provision be repaid or remitted by reason of a deficiency or loss in any other accounting period computed as provided for by the said paragraph 10.

Regulations made by the Commissioners for the purpose of carrying the foregoing provision into effect may provide for defining and ascertaining turnover and the profit or surplus per pound sterling thereof, and for the application of that provision to new societies, and for extending, subject to such modifications as may be prescribed, to cases where duty is computed under that provision any of the general principles of the principal Act as to relief from duty.

**27. Apportionment of accounting periods and years.]**—Where part of an accounting period or of an accounting year, or of any period in respect of part of which munitions Exchequer payments are chargeable, is after, and part before, the beginning of the first day of January nineteen hundred and seventeen, the total

excess profits and any deficiencies or losses arising in any such accounting period, and the total excess rent for any such accounting year, and the total profits in respect of part of which munitions Exchequer payments are chargeable, shall be apportioned between the time up to, and the time after, that date in proportion to the number of months or fractions of months before and after that date respectively.

**28. Interpretation.]**—In this Part of this Act references to the principal Act, or to the Munitions of War Act, 1915, or to any provisions of those Acts, shall be construed as references to those Acts or provisions as amended by any subsequent enactment, and the expression “the Commissioners” means the Commissioners of Inland Revenue, and the expression “munitions Exchequer payments” in this Part of this Act and in any other enactment, includes any sums payable into the Exchequer under section four of the Munitions of War Act, 1915, on account of the excess of the net profits of a controlled establishment.

\* \* \* \* \*

**38.—(1)** Part III. of this Act shall be construed together with Part III. of the Finance (No. 2) Act, 1915.

## STATUTORY RULES AND ORDERS, 1917.

No. 788.



### EXCESS PROFITS DUTY.

THE MUNITIONS EXCHEQUER PAYMENTS RULES, 1917, DATED AUGUST 3, 1917, MADE BY THE COMMISSIONERS OF INLAND REVENUE UNDER SECTION 24 OF THE FINANCE ACT, 1917 (7 & 8 GEO. 5, c. 31).

1. These rules may be cited as the Munitions Exchequer Payments Rules, 1917.
2. In these rules “the Commissioners” means the Commissioners of Inland Revenue; “the Act” means the Finance Act, 1917; unless the context otherwise requires, “the Minister,” “controlled owner,” “period of assessment” and “the referee” have

. the same respective meanings as in the Munitions (Limitation of Profits) Rules, 1915; and "munitions Exchequer payments" has the same meaning as in the Finance Act, 1917.

3. The statutory provisions and rules enumerated in the schedule to these rules shall, except so far as they are repugnant, apply to munitions Exchequer payments as they apply to excess profits duty, and any reference to a person in such provisions and rules may as respects munitions Exchequer payments be read as if it were a reference to a controlled owner.

4. The provisions of the Munitions (Limitation of Profits) Rules, 1915 (hereafter called "the rules of 1915,") and the Munitions (Limitation of Profits) Rules, 1915 (Amendment) Rules, 1917 (hereinafter called "the Munitions Rules, 1917,") shall, except those of rules 6, 11, 12 and 13 of the rules of 1915 and Rule 10 (ii) of those rules as set out in rule 4 of the Munitions Rules, 1917, and except so far as they are repugnant to the provisions of the Act or as is by these rules otherwise expressly provided, continue to apply to the assessment and collection of munitions Exchequer payments. Provided that nothing in this rule shall be held to deprive a controlled owner of any appeal in any matter in which an appeal to the referee is allowed by the rules of 1915, as amended by the Munitions Rules, 1917.

5. The provisions of section 44, subsection (1), of the Finance (No. 2) Act, 1915, and of so much of section 44, subsection (2) thereof as relates to the penalty for failure to furnish a proper return or to furnish particulars in compliance with any requirement of the Commissioners, shall apply for the purposes of munitions Exchequer payments as they apply for the purposes of excess profits duty subject to the necessary modifications and without derogation of the provisions of rules 5, 8 and 14 of the Rules of 1915. But no controlled owner shall be under any obligation to furnish to the Commissioners any return or other particulars if and so far as he satisfies the Commissioners that he has already furnished such return or particulars to the Minister in the form required for purposes of assessment of munitions Exchequer payments.

Any requirement of the Minister made before the passing of the Act, and not met at that date may be deemed to be a requirement by the Commissioners.

6.—(i) If at the time of the commencement of the Act any

munitions Exchequer payments have been assessed by the Minister, but have not been collected, the Commissioners shall serve on the controlled owner a notice stating the amount of the munitions Exchequer payments so assessed, the amount of the munitions Exchequer payments remaining to be paid, and the manner in which such amount is to be paid; and such munitions Exchequer payments remaining to be paid shall be payable by such owner on or before the date specified in the notice, provided that such date shall be at least twenty-eight days from the date when the payments were assessed by the Minister.

(ii) Any such notice may be served on the controlled owner in like manner as a notice of assessment may be served.

(iii) For the purposes of these rules munitions Exchequer payments shall be deemed to have been assessed by the Minister on the date of service of the notice by the Minister under rule 11 of the Rules of 1915, of the amount at which the Minister is prepared to agree the net profits for the period of assessment and a certificate from the Minister that such notice has been given shall be sufficient proof of such assessment.

Provided that any sum that has been required by the Minister to be paid provisionally for the credit of the Exchequer under rule 13 of the Rules of 1915, shall be deemed for the purposes of these rules to be munitions Exchequer payments assessed by the Minister on the date on which the notice requiring such provisional payment was served.

7. Where any agreement exists between the Minister and the controlled owner as to the standard amount of profits or as to the amount of any allowance, adjustment or relief to be made in the assessment of munitions Exchequer payments, the amount of such standard, allowance, adjustment or relief shall be adopted by the Commissioners for the purpose of assessment.

8. Where the controlled owner is aggrieved by any assessment of munitions Exchequer payments made upon him by the Commissioners on the ground—

(a) that the standard amount of profits fixed by the Commissioners should have been fixed under section 5 (3) of the Munitions of War Act, 1915, as amended by any later enactment, and has not been so fixed, or if fixed under that sub-section is erroneous,

(b) that no allowance or adjustment or no sufficient allowance

or adjustment has been made under rule 9 (d) (e) (f) or (g) or rule 10 of the Rules of 1915, as amended by the Munitions Rules, 1917, or

- (c) that the Commissioners have not given due effect to any agreement which has been reached between the Minister and controlled owner as to the amount of any allowance, adjustment or relief to be made in the assessment of the munitions Exchequer payments,

the controlled owner may within thirty days after service of the notice of assessment give notice of objection to the officer of the Commissioners named in that notice, stating the ground of his objection and the amendment required, and, unless the objection is disposed of by agreement, the matter shall be referred by the Commissioners for the opinion of the Minister to whose decision thereon the Commissioners shall give effect. If the controlled owner is dissatisfied with the decision of the Minister in any matter referred to in paragraphs (a), (b) or (c) of this rule in which an appeal to the referee is allowed under rule 6 of the Rules of 1915, or under paragraphs (d), (e), (f) or (g) of rule 9 of the Rules of 1915, or under rule 10 of those rules as amended by the Munitions Rules, 1917, and within thirty days after notice from the Commissioners of such decision gives notice to the Commissioners that he requires the matter to be referred to the referee, the Commissioners shall refer the matter to the referee, whose decision shall be final and conclusive.

**9.—(i)** Where the controlled owner is aggrieved on any ground on which an appeal to the referee is allowed under the Rules of 1915, as amended by the Munitions Rules, 1917, other than those specified in rule 8, by an assessment of munitions Exchequer payments made on him by the Commissioners, he may, within thirty days after service of the notice of assessment, give notice of objection to the officer of the Commissioners named in the notice of assessment stating the ground of his objection and the amendment required, and unless the appeal is otherwise disposed of by agreement between the controlled owner and the Commissioners, the notice shall be referred by the Commissioners to the referee, who shall thereupon determine the assessment at an amount which may be greater or less than the amount stated in the notice of assessment. Nothing herein shall entitle the controlled owner to appeal as respects the standard amount of profits if such standard

has been agreed or is deemed to have been agreed with the Minister prior to the passing of the Act.

(ii) The provision contained in the third paragraph of subsection (5) of section 45 of the Finance (No. 2) Act, 1915, shall apply in the case of appeal under this rule as it applies in the case of an appeal under that section.

10. Where the controlled owner is aggrieved at the amount of any munitions Exchequer payments assessed before the commencement of the Act but not then collected, on any ground on which an appeal to the referee is allowed under the Rules of 1915, as amended by the Munitions Rules, 1917, he may give notice of objection or appeal to the Commissioners as if, and within such time as if, the notice required by these rules to be given as to the amount remaining to be paid were a notice of assessment, and the Commissioners shall deal with such notice of objection or appeal as if it were a notice under rule 8 or 9 of these rules as the case requires, but the Minister or the referee if such notice be referred to him may, if he sees fit, decline to consider the objection or appeal if he is of opinion that the controlled owner had full opportunity of giving notice of objection before the commencement of the Act and ought to have availed himself of that opportunity.

Provided that if at the time of the commencement of the Act such a notice of objection had been duly given but had not been determined, (or if notice of objection is given within the time prescribed but between the time of the passing of the Act and the issue of the notice under rule 6 of these rules) it shall be dealt with by the Commissioners as if it were a notice of objection or appeal under the rules to an assessment made by them.

11. Any matter which under these rules is to be referred to the Minister or the referee may be so referred by the transmission by the Commissioners to the Minister or the referee, as the case may be, of the notice of objection or appeal or a copy thereof together with any particulars relating to the matter which may appear to the Commissioners necessary for the hearing of the objection or appeal.

12. The provisions of section 45, subsection (6) of the Finance (No. 2) Act, 1915, shall apply to munitions Exchequer payments which are the subject of any objection, reference or appeal as they,

apply to excess profits duty which is the subject of appeal under that section.

**13.** Any allowances under rule 9 of the Rules of 1915, which fall to be determined in relation to a total period of time ending after the period in respect of which munitions Exchequer payments may be assessed and to be apportioned, shall be apportioned *pro rata* in the manner directed in section 27 of the Act for the purpose of ascertaining the allowance to be taken into account in computing munitions Exchequer payments: and the reference to the end of the period of control in rule 9 (c) shall be construed as if it were a reference to the date at which allowance for exceptional depreciation and obsolescence under section 40 (3) of the Finance (No. 2) Act, 1915, falls, or may fall, to be finally determined.

Provided that upon any such final determination, any allowance which may have been provisionally made under the said rule 9 and apportioned in respect of the period ending on the 31st December, 1916, shall be revised and the appropriate adjustment made by repayment to the controlled owner or further payment of munitions Exchequer payment as the case may require, and any appeal may be made as respects such adjustment as if it were an assessment of munitions Exchequer payments.

**14.** Any officer of the Commissioners may for any purpose in connection with the assessment and collection of munitions Exchequer payments and appeals and references thereon make use of any returns, correspondence, schedules, accounts, statements or other documents to which he has had or may have lawful access for the purposes of income tax or excess profits duty or which may have been furnished to the Minister for the purposes of munitions Exchequer payments.

**15.** Any sum deposited for the purpose of satisfying munitions Exchequer payments or excess profits duty may be applied in satisfaction of either or both charges.

By order of the Commissioners of Inland Revenue,

*R. V. Nind Hopkins,*  
Secretary.

3rd August, 1917.

## SCHEDULE.

*Finance (No. 2) Act, 1915:*—

- Section 44, subsection (3).
- Section 45, subsection (1).
- Section 45, subsection (3).

*Finance Act, 1916:*—

- Section 54.

*Regulations prescribed by the Commissioners of Inland Revenue under section 45, subsection (7) of the Finance (No. 2) Act, 1915:*—

Regulation 1 and the schedule to the regulations except so far as the schedule relates to section 10, subsection (2), of the Finance Act, 1914, and section 31 of the Finance (No. 2) Act, 1915.

Regulation 2.

Regulation 3.

Regulation 4.

Regulation 11 down to and including the words “the first assessment.”

## FINANCE ACT, 1918.

(8 & 9 Geo. 5, c. 15.)

## PART III.

## EXCESS PROFITS DUTY.

**34.** *Continuation of excess profits duty.]*—The Finance (No. 2) Act, 1915 (in this Part of this Act referred to as “the principal Act”), as amended or extended by any subsequent enactment, shall, so far as it relates to excess profits duty, apply, unless Parliament otherwise determines, to any accounting period ending on or after the first day of August, nineteen hundred and eighteen, and before the first day of August, nineteen hundred and nineteen, as it applies to accounting periods ended after the fourth day of August, nineteen hundred and fourteen, and before the first day of August, nineteen hundred and eighteen.

**35.** *Profits arising from sale of trading stock.]*—(1) For the purposes of excess profits duty the profits arising from the sale at any time after the twenty-second day of April, nineteen hundred

and eighteen, otherwise than in the ordinary course of trade of the trading stock or part of the trading stock belonging or formerly belonging to any trade or business, shall be deemed to be profits arising from a trade or business, and where any such sale takes place after a trade or business has ceased the trade or business shall be deemed to have been carried on up to and including the date on which the sale takes place, and the accounting period shall be taken to be such as the Commissioners of Inland Revenue may determine.

(2) Where a trade or business has ceased but is deemed for the purposes of this section to have been carried on for any period—

(a) the person by whom or by whose authority any trading stock is sold whether as owner, agent, liquidator, trustee, or receiver or other person acting in a similar capacity shall be deemed to be the person carrying on the trade or business and excess profits duty shall be assessed on and recoverable from that person and nothing in subsection (2) of section forty-five of the principal Act shall operate so as to impose any liability to duty on the purchaser of the trading stock; and

(b) the appointment of any such liquidator, trustee or receiver, or other person shall not be treated as a change of ownership of the trade or business, and subsection (3) of section thirty-eight of the principal Act and paragraph seven of Part I. of the Fourth Schedule to that Act as amended by any subsequent enactment shall have effect as if the profits arising from the sale of the trading stock had been made by the owner of the business immediately before the appointment of the liquidator, trustee, receiver, or other person, and as if the duty were payable by him.

(3) Where any trading stock is sold together with other assets of the trade or business, the part of the consideration attributable to the trading stock shall, subject to appeal in manner provided by subsection (5) of section forty-five of the principal Act, be determined by the Commissioners of Inland Revenue, and the part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser.

(4) For the purpose of this section any trading stock which

has been disposed of otherwise than by way of sale shall be deemed to have been sold, and any such trading stock so disposed of, and any trading stock which has been sold for a consideration other than cash, not being a consideration the value of which can be easily ascertained, shall be deemed to have realised the market price of the day on which it was so disposed of or sold.

No person shall at any time after the fourteenth day of May, nineteen hundred and eighteen, dispose otherwise than by way of sale of any trading stock unless he has previously made provision to the satisfaction of the Commissioners of Inland Revenue for securing the payment of any excess profits duty which may be chargeable by virtue of the provisions of this section, and if any person attempts to dispose of any trading stock in contravention of this provision the disposal shall be void and of no effect.

(5) In this section the expression "trading stock" includes—  
 (a) any goods such as are sold in the ordinary course of a trade or business whether in a finished condition or not; and  
 (b) any raw or other materials used in the manufacture or preparation of any such goods,  
 and references to disposal of trading stock do not include disposal by way of testamentary disposition.

\* \* \* \* \*

**45.—(1)** Part III. of this Act shall be construed with the Finance (No. 2) Act, 1915.

### INCOME TAX ACT, 1918.

(8 & 9 GEO. 5, c. 40.)

**53.—(1)** Where in calculating for the purposes of Part II. of the Munitions of War Act, 1915, the profits of a controlled establishment, a deduction has been allowed under that Part of that Act, or rules made thereunder, in respect of exceptional depreciation or obsolescence of buildings, plant or machinery, and the sums so deducted have not been deducted or allowed in computing the amount upon which tax has been paid in respect of those profits, there shall be allowed a repayment of tax equal to the amount of the tax at the rate at which that tax has been paid, on the amount of the sums so deducted.

Provided that the repayment of tax under this section—

- (a) shall be made in respect of the year of assessment which includes the end of the period of assessment in respect of which the said deductions have been allowed under the Munitions of War Act, 1915; and
- (b) shall be deemed to have effected a reduction of the income tax assessment by the amount upon which tax has been so repaid.

(2) Where a deduction on account of any of the matters specified in subsection (1) of this section has been allowed for the purposes of excess profits duty in calculating the profits of a controlled establishment for any period during which it is subject to control, this section shall, subject to the necessary modifications, apply as it applies where a deduction has been allowed in calculating the profits of a controlled establishment for the purposes of Part II. of the Munitions of War Act, 1915.

Provided that a repayment of tax shall not be allowed under this subsection and also under subsection (1) of this section in respect of the same deduction.

(3) The provisions of this Act relating to the allowance of a deduction during succeeding years for wear and tear of machinery or plant where full effect cannot be given to any such deduction in any year shall apply, with the necessary modifications, with respect to any repayment of tax under this section.

(4) Any application for relief under this section shall be made to the Commissioners, by whom the income tax assessment has been made, and those Commissioners, upon proof of the facts to their satisfaction, shall certify to the Commissioners of Inland Revenue the sum repayable and the Commissioners of Inland Revenue shall cause repayment to be made accordingly.

NOTE.—“Year of assessment” means with reference to any tax the year for which such tax was granted by any Act granting duties of income tax (sect. 237).

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## INCOME TAX ACT, 1918.

## FIRST SCHEDULE.

## Schedule D.

*Rules applicable to Cases I and II.*

4.—(1) Where any person has paid excess profits duty, the amount so paid shall be allowed as a deduction in computing the profits or gains of the year which included the end of the accounting period in respect of which the excess profits duty has been paid; but where any person has received repayment of any amount previously paid by him by way of excess profits duty, the amount repaid shall be treated as profits for the year in which the repayment is received.

Provided that any excess profits duty which becomes chargeable by virtue only of the provisions of the Finance Act, 1918, relating to profits arising from the sale of trading stock, otherwise than in the ordinary course of trade, shall not be deemed to be excess profits duty for the purposes of this rule.

(2) The payment of excess profits duty shall not be deemed to be a specific cause for the purpose of rule 3 of the miscellaneous rules applicable to this schedule.

(3) Where in any year of assessment the profits or gains from which a deduction may be made under this rule come for computation, but owing to the time at which the amount of the excess profits duty became ascertained it was impracticable to give effect to the deduction when assessing income tax, the amount by which that tax would have been reduced if effect had been given to the deduction shall be deducted from the amount payable for excess profits duty or, if there is no excess profits duty, shall be repaid to the taxpayer.

(4) This rule shall apply to sums actually paid in respect of munitions Exchequer payments as it applies to excess profits duty, except that the relief to the taxpayer under the last preceding paragraph of this rule shall in all cases be given by means of repayment and not by deduction.

(5) Any excess profits duty and any munitions Exchequer payments which under the provisions contained in section forty-eight of the Finance Act, 1916 (which provides for the adjustments of

excess profits duty and munitions Exchequer payments in the case of controlled establishments) are remitted for the purpose of collection, shall not be deemed to have been paid for the purposes of this rule.

(6) The expression "munitions Exchequer payments" means any sums paid or payable into the Exchequer under section four of the Munitions of War Act, 1915, on account of the excess of the net profits of a controlled establishment.

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## FINANCE ACT, 1919.

(9 & 10 GEO. 5.)

### PART IV.

#### EXCESS PROFITS DUTY.

**32. Continuance of excess profits duty at decreased rate.]—**  
 (1) The Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89) (in this Part of this Act referred to as "the principal Act"), shall, so far as it relates to excess profits duty, apply, unless Parliament otherwise determines, to any accounting period ending on or after the first day of August nineteen hundred and nineteen, and before the fifth day of August nineteen hundred and twenty, as it applies to accounting periods ended after the fourth day of August nineteen hundred and fourteen, and before the first day of August nineteen hundred and nineteen.

(2) Section thirty-eight of the principal Act shall, as respects excess profits arising in any accounting period commencing on or after the first day of January nineteen hundred and nineteen, have effect as if forty per cent. of the excess were substituted as the rate of duty for eighty per cent. of the excess, or, in the case of an accounting period which commenced before that date but ends after that date, as if forty per cent. were substituted for eighty per cent. as respects so much of the excess as may be apportioned under this Part of this Act to the part commencing on that date.

In calculating any repayment or set off under subsection (3) of section thirty-eight of the principal Act any amount to be

repaid or set off on account of a deficiency or loss arising in any accounting period commencing on or after the first day of January, nineteen hundred and nineteen, or, in the case of an accounting period which has commenced before that date but ends after that date, on account of so much of the deficiency or loss as may be apportioned under this Part of this Act to the part commencing on that date, shall be calculated by reference to duty at the rate of forty per cent.

**33. Decrease of rate of excess mineral rights duty.]**—(1) Section forty-three of the principal Act (which relates to excess mineral rights duty) shall have effect as if forty per cent. of the excess were substituted as the rate of duty for eighty per cent. for any accounting year commencing on or after the first day of January, nineteen hundred and nineteen, or, in the case of an accounting year which commenced before that date but ends after that date, as if forty per cent. were substituted for eighty per cent. as respects so much of the excess as may be apportioned under this Part of this Act to the part commencing on that date.

(2) The proviso to section twenty-one of the Finance Act, 1917 (7 & 8 Geo. 5, c. 31), shall apply to any accounting year in respect of which or any part of which excess mineral rights duty is payable at the rate of forty per cent., as it applies where the said duty is payable at the rate of eighty per cent.

**34. Extension of relief in respect of Colonial excess profits duty.]**—Section twenty-three of the Finance Act, 1917 (which provides for relief in respect of Colonial excess profits duty), shall have effect, and shall be deemed always to have had effect, as though references to His Majesty's possessions included references to any territory under His Majesty's protection.

**35. Apportionment of accounting periods and years.]**—Where part of an accounting period or of an accounting year is after, and part before, the beginning of the first day of January nineteen hundred and nineteen, the total excess profits and any deficiencies or losses arising in any such accounting period, and the total excess rent for any such accounting year, shall be apportioned between the time up to, and the time after, that date in proportion to the number of months or fractions of months before and after that date respectively.

**36. Interpretation.]**—In this Part of this Act references to the

principal Act, or to any provisions of that Act, shall be construed as references to that Act, or those provisions, as amended or extended by any subsequent enactment.

PART V.

GENERAL.

\* \* \* \* \*

**38.**—(1) Part IV. of this Act shall be construed together with Part III. of the Finance (No. 2) Act, 1915.

## APPENDIX B.

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### EXCESS PROFITS DUTY.

LIST OF PERCENTAGES FIXED BY BOARD OF REFEREES UNDER FINANCE  
(No. 2) ACT, 1915, SECT. 42 (SEE PAGE 16).

*References to the "Accountant" show where details of business given.*

Trade or Industry.	"Accountant."	Percentages.	
		Companies.	Partnerships.
Agriculture (Greece) .....	....	12	13
Aircraft Manufacture .....	....	15	16
Alluvial Tin Mining (Nigeria) .....	....	13	14
Antimony Mining and Smelting in Mexico.	....	17	18
Asbestos Mining (Crysotile) in Rhodesia.	....	16	17
Balata in British Guiana .....	15/12/17 at p. 465	10	11
Cement Manufacture .....	....	6½	7½
Chrome Ore Mining (New Caledonia) .....	18/11/16 at p. 457	22½	23½
Cinematograph .....	20/1/17 at p. 65	11	12
Coal Mining .....	....	9	10
Coal Mining in Bengal .....	....	10	11
Coal Mining in Rhodesia .....	....	10	11
Coal Mining in South Africa .....	....	9	10
Cocoanut Production (West Indies) .....	15/12/17 at p. 465	11½	12½
Cocoanut Production (Middle East) .....	....	10	11
Cocoanuts and Palmyra Palms, manufacture of products of (Southern India and Ceylon), excluding copra.	....	8½	9½
Coke Manufacture .....	....	8	9
Coke Manufacture in Rhodesia .....	....	9	10
Cold Storage Proprietors and Managers .....	....	7½	8½
Copper Mining and Smelting in California.	....	10	11
Copper Mining and Smelting in Chile .....	5/1/18 at p. 13	10	11
Copper Mining in Rhodesia .....	....	15	16
Daily Newspapers .....	15/12/17 at p. 465	8	9
Electric Cables Manufacture .....	....	7	8
Electric Supply (India) .....	27/1/17 at p. 87	7	8
Electric Supply (London) .....	13/1/17 at p. 33	7	8
Electric Supply (Provinces) .....	13/1/17 at p. 33	7½	8½
Electric Tramways (Cape Colony) .....	24/2/17 at p. 195	7½	8½
Electric Tramways (India) .....	27/1/17 at p. 87	7	8
Electrical Trade .....	4/11/16 at p. 405	7	8
Electrical and Compressed Air Power, supply of, in Transvaal.	....	9	10
Electrical Supply (Victoria) .....	21/1/17 at p. 87	7½	8½
Electrode Manufacture .....	....	6	7
Engineering (Bengal) .....	....	8	9

Trade or Industry.	" Accountant."	Percentages.	
		Com- pani- es.	Partners- hips.
Erinoid Production of Casein by pressure and chemical process of a horn-like material which is non-inflammable and non-conducting.	....	7½	8½
Explosives .....	27/1/17 at p. 87	8	9
Gold Mining in Columbia (excluding recovery of gold from alluvial working and dredging).	....	15	16
Gold Mining in India .....	16/2/18 at p. 147	27½	28½
Gold Mining in Egypt and Sudan .....	....	27½	28½
Gold Mining in Rhodesia .....	....	22½	23½
Gold Mining in West Africa .....	....	22½	23½
Grecian Magnesite Miners .....	5/1/18 at p. 13	10	11
Hosiery .....	4/11/16 at p. 405	6	7
Indigo Growing and Manufacture (British India and Native States).	....	12	13
Iron and Steel Industries (Bengal) .....	....	10	11
Iron Ore Mining in Algeria .....	....	14	15
Jute Spinning (Bengal) .....	23/12/16 at p. 598	7	8
Lead Mining in Western Australia .....	....	14	15
Magneto Manufacture .....	....	11	12
Manganese Ore Mining in Great Britain .....	....	16	17
Mangrove Bark in Borneo .....	....	10	11
Marine Salvage .....	....	15	16
Metalliferous Ores in Burma .....	....	12½	13½
Metals and Alloys for high speed Steel production.	....	12	13
Military Armaments Manufacture .....	....	8½	9½
Motor Manufacture .....	3/2/17 at p. 110	7	8
Newspapers (Scotland) .....	....	8	9
Nickel Mining in New Caledonia .....	....	8	9
Nitrate Extracting and Refining (Chile) .....	....	9	10
Oil Production in Assam .....	3/2/17 at p. 110	8	9
Oil Production in Persia .....	....	11	12
Oil Production in Roumania .....	3/2/17 at p. 110	8½	9½
Oil Production in California .....	24/2/17 at p. 195	8½	9½
Oil Production in Maikop .....	....	14	15
Oil Production in Terek .....	....	10½	11½
Oil Production in Trinidad .....	....	14	15
Oil Raising in Burma .....	....	8½	9½
Oil Raising in Peru .....	24/2/17 at p. 195	8½	9½
Omnibuses .....	27/1/17 at p. 87	8	9
Omnibuses (London) .....	24/2/17 at p. 195	8	9
Palang Consolidated Co. .....	....	16	13
Paint, Colour and Varnish .....	4/11/16 at p. 405	6	7
Philippine Merchants .....	....	7½	8½
Portland Cement (South Africa) .....	....	8½	9½
Road Making Materials manufactured from slag or tar.	....	8½	9½
Rubber Growers .....	4/11/16 at p. 405	10	11
Shale Mining .....	15/12/17 at p. 465	9½	10½
Sheep Farming in Chile and Patagonia .....	23/12/16 at p. 598	11	12

Trade or Industry.	"Accountant."	Percentages.	
		Com- pan- ies.	Partners- hips.
Ships .....	15/12/17 at p. 465	6	7
Silica Ware Manufacturers .....	....	8	9
Steel Manufacturers .....	....	8	9
Stevedores (Port of London) .....	....	6	7
Sugar Cane Growing and Sugar Manufacturing in Portugese East Africa.	....	11½	12½
Sugar Cane Growing and Manufacture in Argentine.	....	11	12
Sugar Cane Growing and Manufacture in British India.	....	11	12
Sugar Cane Growing in Natal .....	....	11½	12½
Sugar Production in West Indies .....	3/2/17 at p. 110	11	12
Sugar Production in Mauritius .....	3/2/17 at p. 110	11½	12½
Sulphide Ores Mining, Milling and Smelting (Broken Hill).	....	9½	10½
Table Glass Ware (Import of) .....	....	6	7
Tea and Coffee Dealers (London Wholesale).	....	6	7
Tea Growing (Ceylon and India) .....	6/1/17 at p. 15	8	9
Tea Growing and Manufacture (Netherlands East Indies).	....	8	9
Theatres, West End .....	....	15	16
Theatres other than West End .....	....	11	12
Tin Dredging in Malay and Siam .....	....	13	14
Tin Mining in Malay .....	....	13	14
Tramways (Great Britain and Ireland) ..	27/1/17 at p. 87	7½	8½
Tramways (New Zealand) .....	23/12, 16 at p. 598	7½	8½
Tungsten and Molybdenum Wires Manufacture.	....	12	13
Wattle Growing in Natal .....	....	9	10
Wolfram Mining in Portugal .....	....	8	9
Wood Pulp Manufacture (Portugal) .....	....	8	9
Zinc Oxide Manufacture (United Kingdom)	....	12	13
<i>Recent Increases.</i>			
Pig Iron, manufacture of, in United Kingdom.	12/4/19 at p. 292	7	8
Synthetic Dye Production .....	....	9	10
Extracting Essences from the Quebracho Tree.	....	9	10

An application for increase of the statutory percentage by manufacturers of rubber goods was refused.

*Author's Note.*—It would appear that for increased capital or to ascertain the pre-war standard where there has not been one pre-war trade year, 3 per cent. should be added to the above figures.

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